114-668

Vol. 2.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. [redacted] 482

CALVIN AMORY STEVENS

Appellant,

vs.

THE MOBILE AND OHIO RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED NOVEMBER 16, 1881.

2

Deposition of Wm. Butler Duncan.

UNITED STATES CIRCUIT COURT,

1

WESTERN DIRTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the MOBILE & OHIO RAILROAD COMPANY,

vs.

2

THE MOBILE & OHIO RAILROAD COMPANY.

Before WILLIAM H. DELANCEY,
Notary Public,
52 Broadway, N. Y.

APRIL 17th, 1880.

3

Present—MR. L. E. WRIGHT,
for Respondents.
MR. E. L. ANDREWS,
for Complainants.

WILLIAM BUTLER DUNCAN, a witness produced on the part of the respondents in the above-entitled suit, being by me first duly cautioned and sworn therein, to testify the truth, the whole truth, and nothing but the truth, deposes and says: 4

(Deposition taken subject to all legal objections of both parties.)

5 *Direct examination* by Mr. L. E. WRIGHT :

1 Q. What is your name, age, residence and occupation ?

A. Wm. Butler Duncan ; fifty years old ; I reside at 24 University Place, New York City ; am at present Receiver and President of the Mobile & Ohio Railroad Company.

2 Q. How long have you been connnected with the Mobile & Ohio Railroad as President and Receiver ; state also your first connection with said
6 road and what positions you have filled in the same ?

A. I originally became a stockholder of the Mobile & Ohio Railroad Company sometime during the years 1867 or 1868, I think ; I was elected a director of the company I think, in 1872 or 1873 ; I was elected President in 1874, and I was appointed Receiver in May, 1875, since which time I have held both of those positions.

3 Q. State what connection you had, if any, with
7 what are known as the substitution bonds of the Mobile & Ohio Railroad Company, and whether you were one of the trustees of what is known as the Tennessee substitution mortgage of the Mobile & Ohio Railroad Company ; give a full and complete history of your connection with the issue of the same and the payment of the debt due the State of Tennessee by the said company ?

A. In the year 1871, the M. & O. R. R. Co. by its president, Mr. Murdock, came to New York for
8 the purpose of availing of the legislation of the State of Tennessee, enabling the said railroad to pay off its indebtedness to the State. Application was made to myself in conjunction with Messrs. Adrian Iselin and R. T. Wilson to provide the necessary amount of bonds of the State of Tennessee to enable the payment of the said debt. An arrangement was made by which we agreed to provide such

bonds and to carry the same until the requisite 9
amount was acquired, under which arrangement we were to charge interest on the advances necessary for the acquisition of the bonds, and a commission. Personally, I agreed that my then firm of Duncan, Sherman & Co., would advance one-third of the amount of the purchase money rendered necessary in the acquisition of said bonds. A portion of such advances were made by the firm through Messrs. Wilson and Iselin. Subsequently when the entire amount of bonds requisite had been acquired the 10
bonds were delivered by Messrs. Wilson, Iselin and myself to the agent of the State of Tennessee in exchange for the bonds of the M. & O. R. R. Co., bearing upon their face, certificate of the Controller of the State of Tennessee that the lien held by the State was assigned to trustees, viz: Messrs. Wilson, Iselin and Duncan, for the benefit of the bonds of the Railroad so delivered to us in exchange for the Tennessee State bonds handed to the agent of the State. Subsequently, these bonds of the railroad, 11
countersigned by the Controller of the State, were disposed of by us, the disposition having been made through the intermediary of Messrs. A. Iselin & Co., and the net profit, after providing for the cost of the State bonds delivered to the Controller with interest and expenses thereto attaching, was paid over to the M. & O. R. R. Co. Personally, neither myself nor my firm had any interest whatever in the matter, except in the charge for interest and commission heretofore mentioned. 12

4 Q. Examine Exhibit No. 3 to the answer of the M. & O. R. R. Co. which purports to be a receipt of the agent of the State of Tennessee for the bonds and coupons of the State of Tennessee, amounting, in the aggregate, to $1,785,245, and state whether the same is a true copy given by the agent of the State of Tennessee?

A. I believe it to be a true copy.

5 Q. State, if you can, where the said Tennessee substitution bonds of the M. & O. R. R. Co. were negotiated and sold, and to whom?

A. They were almost entirely, if not all, sold in Europe, mainly in Switzerland, through the instrumentality of the correspondents of Messrs. A. Iselin & Co., Lombard, Odier & Co., who, to the best of my knowledge, represented a large number of persons who were interested in the same.

6 Q. Have you any means, if so, what, of knowwhether the purchasers of said Tennessee substitution bonds were foreigners?

A. The fact that in the late reorganization scheme of the M. & O. R. R. Co. the entire amount of these bonds were found in the hands of people residing in Europe, and mainly in Switzerland, is the only means I have of knowing who were the purchasers of these bonds.

7 Q. During the time you and your associates, Messrs. Iselin & Wilson, were engaged in procuring the State bonds necessary to a settlement with the State of Tennessee on behalf of the M. & O. R. R. Co., and in the negotiations and sale of the substitution bonds of said company, did you at any time hear of any claim being asserted by the holders of Tennessee State bonds which had been originally loaned to the M. & O. R. R. Co. under the Internal Improvement laws of said State, asserting any claim of lien upon the property of said company situated in the State of Tennessee?

A. I have no recollection of having heard at any time during the negotiation, or for some time thereafter, of any such claim being set up by anyone.

8 Q. Where were the said Tennessee bonds used in settlements with the State obtained; were they purchased on the market at New York.

A. The purchase of the bonds was entirely man-

aged by either Mr. Wilson or Mr. Iselin, I think 17
the former; and to the best of my knowledge were all purchased here in the market, probably at the Stock Exchange; I did not myself buy any bonds at all; I don't know that I ever purchased or sold any Tennessee State bonds, excepting in one instance when during the war I purchased a large amount, I believe $500,000 of the bonds of the State of Tennessee under instructions from George Peabody, of London, who devoted the profits he subsequently made upon that purchase to educational purposes, 18
I think largely in the interest of the State of Tennessee.

9 Q. When did you for the first time hear of the claim that the bonds originally loaned to the M. & O. R. R. Co., by the State of Tennessee under her Internal Improvement laws, constituted a lien upon the road of said company in Tennessee in favor of the bondholders?

A. I have no recollection of hearing of such a claim being set up until the proceedings in the foreclosure 19
of the substitution mortgage in the Circuit Court of the U. S. for the Western District of Tennessee progressed for some time; I don't now recollect having heard it until just preceding the final argument in those proceedings at Memphis in the year 1877; and the suggestion was an entire surprise to me and seemed a ridiculous proposition.

10 Q. When did you first hear of the opinion of Messrs. Davies & Davis, to the effect that the bonds of the State of Tennessee originally loaned to 20
the railroads under the Internal Improvement laws of the State constituted a lien upon the roads of said companies in the State.

A. I have no recollection of having heard of that until the argument before mentioned in the fall of 1877.

11 Q. Are you familiar with the history and de-

tails of the scheme of reorganization of the liens and claims against said M. & O. R. R. Co., and what connection, if any, did you have therewith?

A. I am thoroughly conversant, having been the author, and having, in the main, carried out all the details of the scheme to a successful conclusion through the instrumentality of the Committee of Reorganization.

12 Q. Give, in a general way, the scheme of reorganization, and file the agreement of reorganization and the documents resulting therefrom in carrying out the details of the same?

A. The main feature of the scheme of reorganization was the recognition of all the liabilities of every kind and nature of the M. & O. R. R. Co., with interest thereon up to a certain date, viz., June 1, 1877, and the issue of a new series of securities to represent such claims and interest, in the form of bonds and debentures. The total amount of claims against the M. & O. R. R. Co. upon the foregoing basis aggregated the sum of upwards of $15,000,000, represented originally by upwards of (1) $9,000,000 under the mortgage known as the mortgage of 1853, being a first lien over the entire portion of the M. & O. R. R. lying within the States of Alabama, Mississippi and Kentucky, and upwards of $2,000,000 under the substituted mortgage of 1871, being a first lien upon the M. & O. R. R. lying within the State of Tennessee; (2) a lien over the entire length of the road of nearly $2,000,000; (3) a lien of about $600,000, and (4) indebtedness of about $1,000,000 unsecured. The scheme contemplated new issues in lieu of all these claims, or under certain conditions and circumstances, in exchange of these various claims, the same to be held by a trustee for the benefit of the new issues, the following new securities, viz.: A first mortgage over the entire length of the road for $7,000,000; first preferred

income and sinking fund debentures in like manner 25
of $5,300,000; second debentures to the amount of $1,850,000; third debentures, $600,000; and fourth debentures, $900,000. The total amount of the entire liens, with interest to June 1, 1877, under the two mortgages of 1853 and 1871, aggregated about $12,500,000. In exchange for this lien, as aforesaid, there was created the new first mortgage of $7,000,000, and first preferred income debentures of $5,300,000.

Recognizing the priority of the lien in the State 26
of Tennessee of the Tennessee substitution bonds, and appreciating the importance of securing the adhesion of the representatives of the lien over a section of the road, it was determined, with the assent of the holders of a large number of mortgage bonds, under the mortgage of 1853, to tender to the holders of the Tennessee substitution bonds the following amounts of new securities in exchange, as heretofore stated, for their then holdings, viz.:
For the face of each Tennessee substitution bond, 27
$626 of new 1st mortgage 6%, and $374 of new first preferred income and sinking fund debentures, while the scheme contemplated that the holders of the sterling bonds under the mortgage of 1853 were only to receive $440 in new first mortgage 6% bonds and $560 in first preferred income and sinking fund debentures.

The new first mortgage bears a fixed rate of interest—6% per annum, payable semi-annually, while the preferred income and sinking fund debentures 28
bear interest only if earned, and is not accumulative, and are therefore dependent upon the results of the business annually.

In like manner the 2d, 3d and 4th classes of claims received in exchange therefor 2d, 3d and 4th preferred income and sinking fund debentures, respectively, interest upon which was to be paid an-

29 nually, but only if earned, and after payment of the interest on the 1st preferred income and sinking fund debentures. I herewith hand you copy of the agreement for the reorganization of the securities, &c., of the M. & O. R. R. Co., dated October 1, 1876, and marked Exhibit I, W. H. D. L., N. P., to this deposition; copy of mortgage and deed of trust, and various documents under which the new securities provided by the scheme have been issued, also herewith marked Exhibit II, W. H.
30 D. L., N. P.

13 Q. Please state how far this scheme of reorganization has progressed and to what extent the holders of the various securites of the M. & O. R. R. Co. have become parties to the same?

A. The entire amount of claims of every kind and nature against the M. & O. R. R. Co., with the exception of perhaps less than one half of one per cent. have united in said scheme, and have deposited their securities and claims with the Farmers' Loan
31 and Trust Company of New York, and have received in exchange therefor the new securities provided for by the scheme.

14 Q. When did the holders of said Tennessee substitution bonds and said sterling mortgage bonds become parties to this scheme of reorganization and transfer their securities under it?

A. A large proportion of these securities was transferred almost immediately after the inauguration of the scheme, and within the last three months
32 of 1876, and the first three months of 1877.

15 Q. At the time these claims were so transferred to the Committee of Reorganization, as I understand you, you had not heard of the claim now sought to be established by the holders of the Tennessee State bonds against the M. & O. R. R. Co.?

A. To the best of my recollection it never entered my head that such a claim was suggested until the

time I state, of the argument of the case in Ten- 33
nessee.

16 Q. Had the holders of said Tennessee substitution bonds and sterling mortgage bonds and other securities of said company to the best of your knowledge any information of the said claim on the part of the holders of Tennessee State bonds originally issued to the M. & O. R. R. Co.?

A. On the contrary, we had great difficulty persuading the holders of the Tennessee substitution bonds of the M. & O. R. R. Co. to relinquish a por- 34
tion of the full amount of their bonds or to accept the terms of the scheme of reorganization, claiming as they did to own primarily the lien for the full amount upon the Tennessee portion of the road, which in their judgment was a perfect security. The scheme of reorganization was inaugurated by the holders of the sterling bonds, and none of the committee, Messrs. Hays, Pierson & Dupuy, directly or indirectly were to the best of my knowledge in any way interested in any of the Tennessee bonds; and 35
the fact that the committee and the holders of the first mortgage sterling bonds consented to the placing of the Tennessee substitution bonds upon a superior plane to their own, is evidence to my mind of there being no question in their mind as to the superiority of the lien on said Tennessee bonds over that portion of the road lying within the State of Tennessee.

17 Q. State as far as you know where the holders and owners of the sterling mortgage bonds resided? 36

A. The holders representing about one-third of the total lien under the sterling mortgage resided in Europe, the balance in this country.

18 Q. Please state at what time or times Ernest Saladin and Augusta Iselin and Alex R. Duncan transferred their substitution and sterling mortgage bonds to the committee of reorganization?

A. E. Saladin, on February 16th, 1877; Augusta Iselin, on February 16th, 1877; A. R. Duncan, on November 27, 1876.

19 Q. Do you know the residence of Alex. Robert Duncan, one of the defendants in this case?

A. Yes; he is a resident of Arbroath, County of Forfar, Scotland.

20 Q. Do you know that said Alex. R. Duncan was the owner and holder of said sterling or first mortgage bonds prior to October 1st, 1876, and if so, how many of said bonds did he own, and did he transfer the same to the committee and receive new first mortgage bonds, and debentures in exchange therefor, at the date referred to by you?

A. He was an owner of ten mortgage bonds of 1853, and deposited them with the committee in November, 1876, and he has received new mortgage bonds and debentures to which said sterling bonds were entitled, and for which said sterling bonds are now held for security.

W. BUTLER DUNCAN.

Subscribed and sworn to before me, this 19th day of April, 1880.

WILLIAM H. DELANCEY,
Notary Public.
Westchester County, acting in New York County, under and by virtue of Chapter 807 of the Laws of 1873, of the State of New York.

[L.S.]

Certificate.

41

UNITED STATES OF AMERICA,
Southern District of New York,
State and County of New York. } ss.:

I, WILLIAM H. DELANCEY, a Notary Public, in and for the State and County aforesaid, and duly commissioned and qualified under the laws of the United States to take depositions for use in the Circuit Courts of the United States, do hereby certify that the reason for taking the foregoing depo- 42
sition is, and the fact is that the testimony of the said witness is material and necessary for the respondents in the cause in the caption of said deposition named, and that the said witness lives, and did live at the time of taking said deposition in the City and County of New York, the same being at a greater distance than one hundred miles from the City of Memphis, where the Court, at which it is expected the said cause will be tried, was appointed to be held, to-wit: more than five hundred miles 43
therefrom.

I further certify that the said witness was examined and cross-examined by the counsel for the respective parties to the cause named in the caption hereto.

I further certify that on the 19th day of April, A. D. 1880, I was attended at my office, No. 52 Broadway, in the City, County and State of New York, in the Southern District of New York aforesaid by L. E. Wright, Esq., solicitor, and of counsel for 44
the respondents, E. L. Andrews, Esq., solicitor and of counsel for complainant, and by William Butler Duncan, the witness, who was of sound mind and of lawful age, and the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the pres-

ence of the witness and from his statements, and after carefully reading the same to witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of annexing the several Exhibits, and of sealing up and directing the same with this certificate of the reasons aforesaid for taking the said deposition, with my own hand, to the Court for which the same was taken.

And I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In witness whereof, I have hereunto set my hand and seal this 19th day of April, in the year of our Lord, one thousand eight hundred and eighty, and of the Independence of the United States the one hundred and fourth.

WILLIAM H. DELANCEY,

[L. S.] *Notary Public*,

Westchester County.

Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

EXHIBIT NO. 1.—W. H. D. L., N. P. 49

To Deposition of W. Butler Duncan.

AGREEMENT

FOR THE RE-ADJUSTMENT, &C.,

of the

SECURITIES 50

of the

MOBILE AND OHIO RAILROAD CO.

Dated October 1, 1876.

WM. H. HAYS, *Chairman*,
WM. S. PIERSON,
T. HASKINS DE PUY, 51
Committee of Reorganization.

OFFICE, No. 11 PINE ST., N. Y.

Memorandum of Agreement and transfer, made the first day of October, 1876, by and between the Mobile & Onio Railroad Company, a Corporation by that name exisisting under the laws of Alabama, and operating also under the laws of the States of 52 Mississippi, Tennessee and Kentucky respectively, party of the first part, and the various other parties whose names are subscribed hereto, being creditors of said company, some holding security as hereinafter specified, and others unsecured, each subscriber for himself, and neither for the other, parties of the second part, William H. Hays, of the City of New

York, and William S. Pierson, of Windsor, in the State of Connecticut, and T. Haskins Du Puy, of Philadelphia, in the State of Pennsylvania, parties of the third part :—

Whereas, The said Railroad Company, originally incorporated by the State of Alabama, and operating under the laws of that State, has, by the legislation of the several States of Mississippi, Tennessee, and Kentucky respectively, obtained valuable corporate rights and privileges, as well as important exemptions, in those respective States :—

And whereas, Owing to a succession of misfortunes the said corporation has fallen into arrears in the payment of its bonded and other indebtedness, to such an extent that proceedings for the foreclosure of mortgages executed by it are now pending, which proceedings have gone to an advanced stage and are still being pushed, and, in addition, the day of payment named in some of its mortgages is near at hand ;—

And whereas, Differences and disputes have arisen between the different classes of holders of the securities and evidences of debt issued by said Company, which differences and disputes, if persisted in, are likely to lead to protracted litigation, and to the sacrifice or deterioration of the property of the said Company, and to great delay in the resumption of regular and legitimate operations on the road; and it is therefore deemed expedient that a scheme should be devised, to be assented to by the various classes of claimants upon the said company, for the harmonizing and compromising their respective claims, without ending the corporate existence or corporate powers of said company, and without putting an end to or limit upon its corporate privileges :—

And whereas, The secured indebtedness of the said Company now exists in the form of bonds and coupons secured by mortgage liens, as specified in the schedule hereto annexed, and as appears by the books of the Company, exclusive of interest on said coupons:— 57

And whereas, In addition to said mortgage indebtedness, judgments have been recovered against said Company, which are claimed to constitute liens upon some of its property, subject to its mortgage indebtedness, but a large part of which judgment indebtedness, is presumed by lapse of time and otherwise to have been in fact satisfied; and, in addition thereto, the said Company owes a considerable amount of floating or unsecured indebtedness: and the undersigned, holders of claims of the various classes against said Company, as well those specified in the said schedule hereto annexed, as judgment creditors and unsecured creditors, have agreed to compromise and compound with said Company upon the said Company's issuing new securities for all the said indebtedness in the manner hereinafter agreed upon, to the end that, if practicable, said foreclosure suits may be discontinued, and the property affected thereby restored to the custody and control of the said Company under the conditions of this agreement, and the stipulations accompanying the same:— 58 59

But whereas, It is understood by said creditors that if such scheme shall be found to be impracticable because not assented to by a sufficient number of creditors, or for other reasons, that then the said foreclosure proceedings shall be prosecuted to either a sale or a strict foreclosure, and a purchase or acquisition of the property of the said Company consummated for the benefit of the subscribers hereto, who are such creditors as aforesaid, and that a new 60

61 corporation or corporations shall be created, and new securities issued for the benefit of such creditors.

Now, this memorandum witnesseth, that the said parties hereto have covenanted, agreed and transferred, and do hereby covenant, agree and transfer to and with each other in manner and form following, that is to say:

First.—The said William H. Hays, William S.
62 Pierson, and T. Haskins Du Puy, are hereby constituted assignees in trust, agents, managers and attorneys of the said parties hereto, who are creditors of the Mobile and Ohio Railroad Company, or holders of any of the securities specified in said schedule hereto annexed, for the purpose of receiving the several demands of said creditors who become parties hereto, and of realizing, converting, managing and controlling the same, for the purpose, in the manner, and with the powers hereinafter speci-
63 fied.

Second.—Each of the parties hereto, being a creditor of the said Mobile and Ohio Railroad Company at the time of the expiration of this instrument, assigns, transfers, delivers, and makes over to the said William H. Hays, William H. Pierson, and T. Haskins Du Puy, all the evidences of debt issued by said company, and claims against said company, now held by such subscriber hereto, whether in the
64 shape of bond, coupon, note, judgment, open account, unliquidated demand, unpaid voucher or otherwise, to be held by the said Hays, Pierson and Du Puy, as such assignees, agents, managers and attorneys, in the manner and for the purposes and upon the trusts so hereinafter declared concerning the same. Upon this instrument being subscribed by all the creditors of said corporation, holders of

evidence of debt issued by said corporation, or of other claims against the same, the said assignees, agents and attorneys shall have and hold the claims and evidences of debt of such creditors, with full power and authority to cancel, surrender, release and discharge all such evidences of debt, claims and demands so transferred to them, upon receiving from said Mobile and Ohio Railroad Company new evidences of debt and securities to the extent and in the manner hereinafter provided. 65

Third.—Upon the request of the said Hays, Pierson and Du Puy, or their successors, the said corporation hereby agrees to execute and deliver, or cause to be executed and delivered, to the said William H. Hays, William S. Pierson and T. Haskins Du Puy, or their successors or appointees, new bonds and obligations or acknowledgments of indebtedness secured respectively by a new mortgage and trust deed to be made by said corporation as hereinafter provided, and containing such stipulations and clauses for the security of the creditors of said company as the said assignees and attorneys shall advise and require, not in conflict with the provisions of this agreement. 66 67

Fourth.—The said new mortgage shall be called the first mortgage, and shall constitute a first and primary lien on all of the main line of the said Mobile and Ohio Railroad, lying at and between the City of Mobile and the City of Columbus, in the State of Kentucky (exclusive, however, of the several branches now possessed or to be acquired or constructed, those now possessed being known as the Aberdeen branch, Columbus branch, Starkville branch and the Gainesville branch), covering all and singular the chartered rights, railways, sidings, turnouts and all connected therewith, bridges, fences, warehouses, depot and office buildings, machine 68

shops, tools, iron, timber and all materials necessary in the repair of the road, rolling stock or machinery, and all wood and coal and other materials necessary in running said road, and all fixtures, privileges, rights, real estate, and all other property owned, and which may be hereafter owned by said company, and which shall be necessary to the business of said company, or for the purpose of carrying freight and passengers upon said main line; but not including any lands granted to said company by any State, or by the United States, nor lands which may be situated apart from the line of the road, and not actually required for the use or running of the road, the said trust deed shall be in the form, and shall have the effect and operation of a conveyance in trust to trustees, of the lands granted to said company by any State or the United States, as well as all lands belonging to the company and not necessary for the operation of the railroad of said company, and also so much of the net income of said company as shall remain after payment of current expenses, cost of maintenance, improvement and repairs, and interest on said new first mortgage, and on the debentures, as hereafter more particularly specified.

Fifth.—The first mortgage mentioned in the last preceding paragraph shall be made for the security of the holders of the present outstanding issue of first mortgage bonds of said corporation, and of the coupons issued with said first mortgage bonds, whether such coupons are now detached from such bonds, or are now attached thereto, and for the benefit and security of the holders of the issues known as the sterling arrearage interest bonds, the funded arrearage interest bonds, and the coupons detached from or attached to such bonds, matured and unpaid, and also for the benefit and security of

the holders of the issue known as the Tennessee Sub- 73
stitution Bonds, and coupons detached therefrom or attached thereto, matured and unpaid, all upon an equal footing as to grade of new security (provided such holders become parties to this agreement. and transfer the securities held by them respectively pursuant hereto), and for the purpose of providing funds for necessary expenses and outlay under this agreement. The total amount of principal money secured by bonds issued under the new first mortgage is to be seven millions of dollars, payable in 74
the City of New York, in gold coin of the United States, on the first day of December, in the year 1927, bearing interest payable in lawful money of the United States, in the following manner: two per cent. on the first day of December, 1877; two per cent. on the first day of June, 1878; three per cent. on each first day of December and June thereafter; and the bonds to be issued under said first mortgage may be in sums of either $1,000, $500, $300 or $100 each, and shall have negotiable inter- 75
est warrants or coupons attached thereto payable in New York. But the holders of the present first mortgage securities are to be interested in the new securities issued under the new first mortgage, as next hereafter stated; that is to say:

Sixth.—Each subscriber hereto, who shall have transferred to the said assignees, agents and attorneys a first mortgage bond of said company, shall be entitled to receive an amount equal to four hundred and forty dollars for each one thousand dol- 76
lars, or each £225, of the principal sum payable upon such bonds so transferred, in a bond or bonds, to be issued under the said new first mortgage hereinbefore provided for, to be taken at par; and every subscriber hereto, who shall have so transferred first mortgage coupons of said company heretofore issued (provided the due date originally mentioned there-

in shall not have been later than the first day of November, 1877), shall receive an amount equal to the value of such coupons, as below estimated, in a bond or bonds, to be issued under said new first mortgage hereinabove provided for, each such coupon to be estimated for this purpose as being worth, and as securing the payment of, thirty-six dollars, except coupons maturing November 1, 1877, which shall each be estimated as worth only six dollars; and each holder of sterling interest bonds who shall have become a subscriber to this agreement, and shall have transferred his bonds in pursuance hereof, shall be entitled in lieu of each bond so transferred, to a bond or bonds, for the principal sum of four hundred and forty dollars each, to be issued under said new first mortgage for each £200 of the principal amount of the bonds so transferred by him under this agreement; and each holder of coupons heretofore issued with any such sterling interest bond (provided the original due date named in such coupon shall not be later than the first day of November, 1877), shall be entitled in lieu thereof to a bond or bonds to be issued under such new first mortgage for the amount of the coupons so transferred, valuing each such coupon at the sum of thirty-six dollars, except coupons maturing November 1, 1877, which shall be valued at only six dollars; and each holder of bonds generally known as arrearage interest bonds, who shall have become a subscriber to this instrument, and shall have transferred his bonds pursuant to the terms hereof, shall be entitled to a bond or bonds to be issued under said new first mortgage for the principal sum of three hundred and ten dollars for each $1,000 of the principal amount of the bonds so transferred, and each holder of coupons heretofore issued with such arrearage interest bonds (provided the original due date of such coupons shall not have been later than

the first day of November, 1877), shall be entitled to 81
new first mortgage bonds for the amount of the coupons so transferred, valuing each such coupon at thirty-six dollars, except that coupons of which the original due date was the first day of November, 1877, shall be valued at six dollars each; each holder of bonds known as Tennessee Substitution Bonds, who shall have become a subscriber to this agreement, and who shall have transferred his bonds as aforesaid to said assignees and attorneys, shall receive in lieu of the bonds so transferred a bond or 82
bonds to be issued under said new first mortgage for the par amount of $626 for each bond so transferred, and each holder of coupons heretofore issued with any such Tennessee Substitution Bonds (provided the original due date of such coupons was not later than July 1st, 1877), who shall have become a subscriber to this agreement, and who shall have transferred his coupons to said assignees and attorneys, shall be entitled in lieu thereof to receive a new first mortgage bond or bonds for the amount of his 83
coupons so transferred, estimating each such coupon at thirty-six dollars, except the coupons maturing July 1, 1877, which shall be valued at only thirty dollars each.

Seventh.—The trust deed hereinabove provided for shall be in part for the security of the same class of present creditors who, as above agreed, are entitled to be secured by the said new first mortgage, to the extent of the difference, as below stated, be- 84
tween the amount of new bonds to be issued to them or for their benefit, as above provided, and the principal amounts of the bonds now outstanding and transferred by them respectively, and also for the benefit of the remaining creditors of said company who shall become parties to this agreement and become entitled to the benefit thereof; and to that end it is now provided--

85 *Eighth.*—Each bond now held by any such present first mortgage creditor as last aforesaid for the principal sum of one thousand dollars gold or lawful money, or for the principal sum of £225, £205, or £200, shall, for the purpose of ascertaining such difference, be estimated as worth one thousand dollars; and each bond payable in dollars, gold or lawful money, for a less sum than $1,000, shall be estimated at its face, without interest, and each bond payable in sterling money for less than £200
86 shall be estimated at the rate of five dollars for each pound sterling of principal money payable by the terms of such bond. And after charging to each subscriber hereto who shall have transferred bonds as above agreed, the principal amount of the bonds to be issued to him as above provided in the sixth paragraph, not taking into account any bonds issued in lieu of coupons transferred under said sixth paragraph, he shall be entitled to a preferred income and sinking fund debenture or debentures, of
87 the first series to be issued under said trust deed, as hereinafter provided, for the difference between the principal sum of the new first mortgage bonds so charged to him and the principal sum of the bonds so transferred, valued as above provided.

Ninth.—The preferred income and sinking fund indebtedness issued under said trust deed may be in sums of $1,000, $500, $300, or $100 each, and shall not have any interest coupons attached thereto, and
88 shall not be payable absolutely, but only out of the sinking fund hereinafter provided; and shall be registered and shall be transferrable only on the books of the company, at the office of the company, in the city of New York, and shall not otherwise be transferable, and shall be issued in successive series, the first series to be known as first preferred income and sinking fund debentures, the second series to be

known as second preferred income and sinking fund 89
debentures, the third series to be known as third preferred income and sinking fund debentures, and the fourth series to be known as fourth preferred income and sinking fund debentures, and such debentures shall be so expressed as that interest at a rate not exceeding seven per cent. per annum shall be payable thereon yearly, that is, on the first day of February in each year after the year 1878, upon the conditions herein specified, that is: on or before the first day of December, in the year 1878, and each year there- 90
after, said company shall ascertain as closely as practicable the net earnings of such company remaining after paying the expenses of the corporation, cost of maintenance and proper repair, and the interest on the new first mortgage bonds up to the first day of September next preceding, that being the end of the fiscal year; and in case there shall remain on such first day of December a residue of earnings for the year ending on the first day of September next previous, and if it shall then be 91
ascertained that up to the first day of September next preceding that first day of December, the earnings of said company, after making provision for such expenses, interest and the proper maintenance of the property in good order, leave any sum applicable to the payment of interest on such debentures, then such net earnings shall be applied to the payment of interest on said first preferred income and sinking fund debentures, not exceeding seven per cent. in lawful money of the United States, and such 92
application and payment shall be made on or before the first day of February in the next succeeding year; and after payment of interest at the rate of seven per cent. per annum on said debentures of the first series, what remains of said net earnings shall be applied to the payment of interest on said debentures of the second series, at a rate not exceeding

seven per cent. per annum; and after payment of interest at that rate on said debentures of the second series, what remains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum on said debentures of the third series; and what then remains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum on said debentures of the fourth series; but in case the earnings of any one of such years shall not be adequate to the payment of seven per cent. interest for that year on all other series of said debentures then the deficiency shall not have any claim upon the net earnings of any succeeding year. And the net earnings shall only be applicable to the payment of interest on either series of debentures in case such earnings shall amount to at least one per cent. or a multiple of one per cent. on the total amount of the debentures belong to such series, so that fractions of net earnings exceeding such one per cent. or a multiple of one per cent. need not be included in the payment of interest for that year, but shall be carried to the credit of the earnings for the succeeding year.

Tenth.—The aforesaid second preferred income and sinking fund debentures shall be issued for the benefit and security of that class of the present creditors of said corporation, who are known as second mortgage bondholders, all to be upon the same footing with each other as to security and priority. Each second mortgage bond of said company, and each coupon thereof now outstanding shall be considered as of the par value represented on its face in currency, provided the due date originally specified therein shall not have been later than the first day of March, 1878, except coupons maturing March 1, 1878, which when for $80 on their face shall each be estimated

as worth only twenty dollars, or in that proportion 97
for any coupon of any smaller amount than $80. Each holder of a present outstanding second mortgage bond or coupon of said company, who shall have become a subscriber to this agreement, and shall have transferred his bond or coupon pursuant to the terms hereof, shall be entitled to receive dollar for dollar for the principal of his bond and coupon so transferred as aforesaid, in a second preferred income and sinking fund debenture.

98

Eleventh.—The said debentures of the third series shall be for the benefit and security of the holders of the present outstanding bonds of said corporation, and shall be for an aggregate amount sufficient to represent the aggregate amount of now outstanding convertible bonds, and the interest thereon up to the first day of June, 1877. Each holder of a convertible bond who shall have become a subscriber to this agreement, and thall have transferred his bond as and in the manner aforesaid, shall 99
be entitled in lieu thereof to a debenture of the third series, for the par amount of the bonds so transferred, estimating the same at its face value in currency, and the accrued interest on such convertible bond, to be computed up to the first day of June, 1877, shall be replaced by a debenture of the third series for the actual amount of such interest up to that date.

Twelfth.—The said debentures of the fourth series shall be for such amount as said assignees 100
and attorneys shall determine to be necessary for the purpose of satisfying such judgment and unsecured indebtedness of the said company as they shall deem to be morally obligatory, in their discretion, so far as the same shall be held by subscribers to this instrument who shall have transferred their claims to the said assignees and attorneys, subject

to adjustment by said assignees and attorneys, but the same shall not exceed the sum of the face value of such judgments or indebtedness, and no unsecured or judgment creditor shall be admitted as a subscriber to this instrument, nor entitled to the benefit thereof, for any amount exceeding that which may be adjusted and allowed to him by said assignees and attorneys; and each such judgment and unsecured creditor who shall so become a party hereto, shall be entitled to a debenture of the fourth series for such sum as said assignees and attorneys may adjudge to be justly due him.

Thirteenth.—In case all the holders of the unsecured or judgment indebtedness of said corporation shall not have become parties hereto, or shall not have assented to the adjustment of their claims by the said assignees and attorneys, and the reduction thereof to the amount which said assignees and attorneys shall deem to be justly and equitably due thereon, then said assignees and attorneys, instead of cancelling and surrendering all of said mortgage bonds now outstanding, transferred to them under this agreement, shall hold said mortgage bonds or so much thereof as may in their discretion be necessary for the security of the new securities against said unsecured and judgment indebtedness, except that the new mortgage and trust deed issued by said corporation shall have priority over such old mortgage bonds; but such original mortgage bonds shall be held by the trustee in the new first mortgage, in trust for the benefit of the holders of the new securities of the said corporstion, according to their order and priority, prior to and to the exclusion of, the unsecured and judgment creditors who shall not have assented to this agreement. And each of said present mortgage bonds transferred under this agreement, and held by said trustees, as before stated,

shall be stamped by the assignees and attorneys with 105
the following words: "In pursuance of the terms of agreement made between the Mobile & Ohio Railroad Company and its creditors, bearing date October 1, 1876, this bond is not negotiable, being held subject to the provisions, and for the purposes mentioned in said agreement."

Fourteenth.—The said assignees and attorneys shall not be authorized to cancel or surrender any of the existing obligations or evidences of debt of the said 106
corporation, transferred to them under this agreement, unless all the present holders of the mortgage securities of said company shall have become parties to this instrument, and transferred the securities held by them on or before the first day of March, 1877, or at or before such time as the said assignees and attorneys shall have fixed, as in their discretion they may, by successive extensions of not more than sixty days each; nor until said corporation, or its stockholders, through legal and proper action of its 107
stockholders, if such action be necessary, or otherwise according to law, shall have entered into an adequate and sufficient arrangement or agreement with said assignees and attorneys, and with the holders of said debentures, enabling the holders of said debentures, or the trustees under said trust deed, to vote at elections for directors of the said company, and irrevocably represent such stock, or a majority thereof, at all stockholders' meetings until such debentures shall be extinguished; and 108
upon that privilege of representation being acquired by and vested in or secured to the trustees in said trust deed, or to the holders of the said debentures, by the proper and legal action of such corporation or its stockholders, and upon all the new mortgages and securities above called for being issued, then such cancellation and surrender may be fully com-

109 pleted and consummated (except in the contingency provided in paragraph 15 of this agreement), and the property and management of the corporation may be restored to it, and said foreclosure suits may be discontinued.

Fifteenth.—Any surplus of new securities created created under this agreement, not required for the satisfaction of the claims of existing creditors, may be applied and appropriated by said assignees and attorneys to the payment of the expenses of making
110 this agreement and carrying the same into effect, as well as the expenses of said foreclosure suits, and the said assignees and attorneys, as transferees and assignees of the subscribers to this instrument, shall have the same rights and relations to the foreclosure suits now pending and to the complainants in said foreclosure suits, and to the receivers of said suits, and to the funds in their hands, which the subscribers to this agreement now have or would have if they continued to be holders of the bonds and claims
111 subscribed thereto, and shall be entitled to the same share of the proceeds of the present management of the property of said company, and to the same share of the proceeds of the sale of such property which their assignors would have upon a discontinuance of said foreclosure suits, or upon an accounting, or upon a sale or distribution of the proceeds, their several assignors to be considered, in relation to such proceeds, as being upon the the same grade of pri-
112 ority and security, as between and among each other, upon which the provisions of this agreement would place them in relation to the new securities to be issued by said company.

Sixteenth.—In case a sufficient number of subscribers shall not be obtained to this agreement on or before the time prescribed herein, to put it within the power of said assignees and attorneys to carry

into effect the foregoing clauses and stipulations of 113
this agreement, then this agreement shall be binding upon the subscribers thereto, provided it shall have been subscribed by holders of at least a majority in amount of the existing first mortgage indebtedness and Tennessee Substitution Bonds of said company, as recited in the schedules hereto annexed; and thereupon said assignees and attorneys shall have power and authority to appropriate the bonds, coupons, moneys (if any), and evidences of debt which shall have come into their possession, under the 114
provisions of this agreement, towards the purchase of the property of said railroad corporation, under such decree or decrees of foreclosure as shall be obtained in said pending suits, and shall have power and authority, and it shall be their duty, to aid the complainants in said suits in speeding said suits to their conclusion by decrees of foreclosure and sale, or of strict foreclosure, in the interest and for the benefit of the subscribers to this agreement, and they shall have power to turn the securities, re- 115
ceived by them under this agreement, into Court in payment for said property, upon the purchase thereof by them upon the foreclosure; and in the event of its becoming necessary for the protection of the interest of the parties subscribing thereto, that any cash or other payment than the securities in their possession should be made into court, said assignees and attorneys shall have power to make such payment for the account of and at the risk of the parties subscribing hereto, or by obtaining the 116
amount thereof upon the security of the bonds and coupons in their hands; and shall likewise have power to apply for and receive dividends upon the bonds and coupons received by them under this agreement from the funds in court in the hands of the receivers, or of any master or marshal or clerk or otherwise to the same extent as the original

holders of the bonds and coupons retained and held by them would have been; and while no authority is given to them to make any subscribers hereto personally responsible for the payment of any debt incurred by them, they are authorized with the assent of the trustees of the present first mortgages, or a majority of them, to pledge the bonds and coupons in their possession for the purpose so far as necessary of obtaining means to expedite, and bring to a conclusion this compromise or said forclosure suits.

Seventeenth.—The parties subscribing hereto and transferring any evidence of debt or claim according to the terms of this instrument, shall be entitled to certificates, specifying their contributions respectively and their interests respectively to and in this agreement and the benefits thereof; and each certificate shall be transferrable and deliverable to bearer without a transfer being required to be made in any book or in writing, and shall represent on its face the securities deposited therefor.

Eighteenth.—Upon the purchase of the property of said company by said assignees and attorneys at any sale or sales under decree of sale or strict foreclosure, it shall be their duty to avail themselves of any existing law in either of the States of Alabama, Tennessee, Mississippi or Kentucky, or to procure legislation, so far as may be necessary, for the purpose of creating a new corporation or new corporations to which it shall be their duty to transfer the property so purchased by them as early as practicable upon receiving from such new corporation the new bonds, debentures, mortgage and trust deed hereinabove specified for the same amount which would be required to carry the above proposed compromise into effect, such mortgage and trust deed to be made to one or more trustees in each case to be

selected by said assignees and attorneys, and to be 121
properly framed for the security of the several classes of creditors to be benefited thereby ; and so far as the evidences of debt to be issued under such new mortgage or trust deed, whether by said Mobile & Ohio Railroad Company, or by a new corporation, shall not be required to be issued or delivered in exchange for securities which shall have come into and remained in the hands of such assignees and attorneys under this agreement, such surplus securities shall be sold, or so much thereof as in their judg- 122
ment shall be necessary for the purposes hereinafter named ; and the proceeds thereof, and also any sums received by them in cash from the receivers, or from any officer of the court, shall be applied, in the first place, in repaying any sums advanced, or procured to be advanced, by said assignees and attorneys for the purpose of meeting the expenses of said foreclosure suits and of carrying this agreement into effect, and the expense of making such purchase and reorganization ; and then the surplus, if 123
any, remaining from such disposition of such new securities, as well as any new securities which may remain unsold or undisposed of, and any sums realized by said assignees and attorneys from the receivers or managers of said property in said foreclosure suits, or from the management or running of the road, shall be accounted for by said assignees and attorneys to said new corporation, which said new corporation is to consist of and be created by the subscribers to this agreement, so far as they are 124
entitled to the benefit of the same ; and said new corporation, or said existing corporation, in case the compromise above specified shall be carried into effect, shall be considered as subrogated to all the rights of the subscribers to this agreement, for the purpose of calling the said assignees and attorneys to account. The said assignees and attorneys shall

125 be allowed out of the fund, for compensation for their services and responsibility, such amounts as shall be reasonably just according to the character of such services and responsibility; but there is no personal responsibility on the part of any subscriber hereto for any part of such compensation; and said assignees and attorneys, and their necessary clerks, bookkeepers, and their employees of any grade or description, shall be entitled to a lien upon the new securities, and upon the cash received by said assig-
126 nees and attorneys, and the cash proceeds of such of the same as they are authorized to dispose of, for their compensation, liabilities and disbursements, whether absolute or contingent, until their account shall have been duly and properly settled with such organization; and such existing corporation, or such new corporation or corporations, as the case may require, shall, before payment of interest on any of the new securities, assume and pay any excess of such compensation, liabilities and disburse-
127 ments above the amount realized by said assignees and attorneys from funds in their hands.

Nineteenth.—The subscribers hereto, who shall respectively have transferred to said assignees and attorneys their several claims, provided such claims shall remain under the control of such assignees and attorneys, and available for the purpose of purchasing the property now mortgaged in said foreclosure suits, shall be interested in the property after such
128 purchase, and so long as the title thereto remains in said assignees and attorneys, as beneficiaries and *cestuis que trust*, in the same proportions, and shall have the same relative rights and interests, as against each other, as in the new securities to be created under this agreement.

Twentieth.—The trust deed hereinabove provided for, whether executed in pursuance of the compro-

mise agreed upon, or by a new corporation or corpo- 129
tions to be created after a foreclosure, shall contain provision for the creation of a sinking fund for the benefit of the holders of said debentures in the order in which the interest on such debentures is as above specified payable.

Such sinking fund is to consist of the proceeds of all lands owned, and which may hereafter be owned by said company, with the exception of such as are covered by the above mentioned first mortgage, and with the exception of the railway, rails, bridges, 130
fences, warehouse and other fixtures, rights, privileges and real estate belonging to the above mentioned branches, but including all lands not so covered, but conveyed to the Mobile and Ohio Railroad Company by any State or by the United States. The trustees under said trust deed are to have power of sale over said lands from time to time, and such trust deed shall contain clauses properly framed conveying to trustees under such deed the same powers of sale in respect to the lands conveyed 131
thereby as are possessed by the trustees under the now existing first mortgage; and the first mortgage to be created under this agreement is not to apply to or cover such lands, and the proceeds of sales of such lands are to be free from the lien of said new first mortgage, and are to constitute a fund for the exclusive benefit of the holders of said debentures. But such new trust deed shall also contain a provision by way of covenant, declaration, grant or otherwise, as said assignees and attorneys may direct, in 132
substance and effect that the amount of principal and interest payable upon said debentures shall constitute a lien upon the railway property of said existing corporation, or of said new corporation or corporations, as the case may require, to such an extent that in case of a foreclosure of said new first mortgage and a sale thereunder, the trustees in said

trust deed, for the benefit of holders of said debentures according to their order and priority, shall be entitled to the surplus proceeds of such sale next after payment of said new first mortgage, to the amount of the aggregate principal sum due on such debentures, and so that in case any lien upon said railway property, or any part thereof, shall arise, subsequent to the making of said trust deed, by the act or sufferance of such existing or new corporation, and such subsequent lien shall be enforced to the extent of depriving said existing or new corporation of the possession of such railway property, or any part thereof, then the trustees in said trust deed may enter into possession of such part of said railway property, and sell the same, clear of all subsequent liens, for the benefit of holders of said debentures according to their order and priority, or may exact redemption and payment in full of the principal amount of such debentures before surrendering such property to such subsequent lienors; and said trust deed shall also contain proper covenants and securities, for the ascertainment and application of the income of the property of said existing or new corporation and its successors, as the case may require, according to the provisions of this agreement; and there shall be paid into the sinking fund all the interest accruing on debentures bought for the sinking fund, until all the debentures shall have been bought, satisfied or extinguished, and there shall also be paid into the sinking fund a further amount equal to the dividend which may hereafter be declared upon the capital stock now existing or hereafter to be created of such company, which dividend shall not be declared or paid except an amount equal thereto is also paid in at the same time out of the net revenue into the sinking fund.

The Trustees making sales of said lands are to deposit the proceeds thereof in the Bank of the State

of New York, in the city of New York, or such other 137
depository as the trustees in said trust deed may select in the said City of New York; and each six months, that is, on the first days of May and November, the trustees shall advertise in the cities of Mobile and New York, stating the amount so deposited and at the disposition of the sinking fund, and asking for tenders thereof in the first series of said debentures then outstanding, awarding the amount so deposited to the holders of debentures, tendered at the lowest grades of price, in succession. In de- 138
fault of any bids or tenders therefor at less than par, the trustees shall thereupon draw by lot a sufficient number of debentures of the first series then outstanding, to absorb such deposits, and shall apply such deposits to the purchase of the debentures so drawn by lot at par. After purchase of the said debentures of the first series, the said sinking fund shall be applied in like manner, and by the same means, to the purchase of each other of the said several series of debentures in succession. 139

Twenty-first.—In case a prosecution of said foreclosure suits to a sale or to a strict foreclosure is found to be necessary, and it shall also be found necessary to create a new corporation or corporations, then the capital stock of such new corporation or corporations shall be fixed at not exceeding the sum of ten million dollars, to be divided into shares of one hundred dollars each, and shall be in the first instance issued to said assignees and attorneys as a 140
part of the funds in their hands for the purposes of this agreement; and they shall so place a majority of such stock as to secure to the holders of said debentures directly, or through the trustees in said trust deed, the control of the management of the corporation, and any surplus of such new stock remaining after that disposition of it, and after the

trust under said trust deed shall be fully executed, shall be treated in like manner with any surplus bonds or other securities, to be issued by The Mobile and Ohio Railroad Company, or by a new corporation or corporations, under the provisions of this agreement.

Twenty-second.—Bonds, securities, claims, and evidences of debt, transferred to said assignees and attorneys under the provisions of this agreement, shall be deposited, at the option of the parties transferring the same, either in The Farmers' Loan & Trust Company, in the City of New York, or in the Bank of Mobile, at Mobile, in the State of Alabama, or with C. M. Lampson & Co., in the City of London, or at the Frankfurter Bank Verein, in the City of Frankfurt, or with Lombard, Odier & Co., in the City of Geneva, who shall respectively be authorized to give therefor the certificates above provided for, or their receipts exchangeable for said certificates; and the securities so deposited shall remain in the several depositories subject to the order of said assignees and attorneys, until the same shall be required for cancellation, surrender, exchange, or delivery into court by said assignees and attorneys, or for other purposes of this agreement, in which case the same shall be transmitted from the depositories thereof to such attorneys and assignees, either at The Farmers' Loan & Trust Company, in the City of New York, or at the Bank of Mobile, in the City of Mobile, as said assignees and attorneys may direct, from which depositories the same may be taken by said assignees and attorneys when required for any or either of the purposes aforesaid; and securities and cash funds received by said assignees and attorneys, under the provisions of this agreement, shall be deposited by them, either in The Farmers' Loan & Trust Company, in the City of New York, or in the Bank of Mobile, in the City of Mobile

Twenty-third.—In case of a vacancy in the office 145
of assignee or attorney under this agreement, arising from the death or resignation of either of the parties, or from his incompetency to act, the vacancy may be filled by the unanimous agreement of the trustees acting under the existing first mortgage of said corporation, and the remaining assignees and attorneys under this agreement.

Twenty-fourth.—The said assignees and attorneys shall have an office in the City of New York, and 146
shall keep regular accounts and books of account, showing their transactions, which shall be open to the inspection of certificate holders at reasonable times during business hours, and a majority of said assignees and attorneys shall be competent to transact business at any meeting of which all three of the assignees and attorneys shall have been notified, and any substituted assignee or attorney, duly appointed pursuant to the provisions of this agreement, shall have the same power, authority, and 147
control which his predecessor had; and all the provisions of this agreement, and all the powers conferred thereby, shall apply to and be vested in such assignee and attorney so far as his predecessor had such power, or was subject to such provisions; but so far as any discretionary power is conferred by this agreement, no such discretion shall be, or can be used, without the consent of all the attorneys and assignees acting at the time under this agreement, assignees acting at the time under this agree- 148
ment, and each assignee and attorney shall be responsible only for his own acts, and not for the acts of others; and neither assignee or attorney shall be responsible for any error of judgment, nor for any error or negligence of any subordinate officer or agent, unless such officer or agent shall be employed or continued in employment negligently by such assignees and attorneys.

Twenty-fifth.—The new securities to be issued by said Mobile & Ohio Railroad Company, or by a new corporation or corporations to be created under the terms of this agreement, shall be in the first instance delivered by the said company to said assignees and attorneys, or their successors, who shall deposit the same in the said The Farmers' Loan & Trust Co., or in the said Bank of Mobile, and no subscriber hereto or his successor in interest shall be entitled to any portion of such new securities except upon a return or surrender in said assignees and attorneys at one or other of the said places of deposit of the certificate or certificates held by such subscriber. In case in the original distribution of the new securities to be issued in pursuance of this agreement, any party shall become entitled to a fractional part, less than $100, of a bond or debenture, a certificate therefor may be issued, which, when united with other fractional certificates, so as to make an entire bond or debenture, for either one of the even amounts in which said bonds or debentures are above authorized to be issued, may be funded in such bonds or debentures of even amounts, as the case may require.

Twenty-sixth.—The assignees and attorneys acting under this instrument are hereby invested with full power and authority to execute the provisions of this plan; to supply any and every defect, in any and every case which is unprovided for in its terms, and to do anything and everything that is proper in their judgment to carry out its provisions.

Twenty-seventh.—The said assignees and attorneys may, in the transaction of business, call themselves "The Committee of Reorganization of the Mobile & Ohio Railroad Company," and, when acting in that name, shall be considered as acting as attorneys, agents, managers and assignees under this agreement. In the adjustment of their accounts

they shall be allowed such payments and expenditures as shall have been made by them in good faith, in the belief of the necessity of making such payments and expenditures for the benefit of the subscribers hereto, and for the purpose of carrying this agreement into effect. 153

Twenty-eighth.—All bonds, securities, and evidences of debt, &c., transferred under this agreement, shall be in the first instance deposited for the purposes of this agreement in one or the other of the depositories herein named, or in others selected as authorized by this agreement; and all new securities to be issued by the present corporation, or by a new corporation, shall, in like manner, be deposited with one or the other of said depositories, to be by such depository distributed to the parties entitled thereto, under the order and with the assent and approval of the assignees and attorneys; and in the transmission of either the present or future securities in fulfillment of this agreement, the assignees, attorneys, and depositories, using due diligence, may, in their discretion, insure or otherwise protect such securities at the expense of the fund, and in case of loss shall be relieved from liability. 154 155

Twenty-ninth.—Any duplicate or other copy of this agreement which shall be subscribed by any holder of the said bonds, securities, liens, claims, judgments, or stock, and delivered to and accepted by said assignees and attorneys, shall have like effect as if such signatures were herewith subscribed. 156

157 EXHIBIT NO. 2.—W. H. P. L., N. P.

To Deposition of W. Butler Duncan.

MOBILE & OHIO R. R. CO.

NEW ISSUES

UNDER THE

158 Agreement for the Re-adjustment of the Securities, &c., of the Mobile & Ohio Railroad Company,

DATED OCTOBER 1st, 1876.

Form of Mortgage.
" *Deed of Trust.*
" *Assignment of Securities, &c.*
" *Power of Attorney.*
" *Bond.*
159 " *Debenture.*
" *Stock Certificate.*

MOBILE & OHIO R. R. CO.

Mortgage, $7,000,000.

Dated May 1, 1879.
Due December 1, 1927.
160 *Interest* 6 *per cent. per annum.*
Payable June and December.

THE FARMERS' LOAN & TRUST CO., TRUSTEES.

Date. *This indenture*, made this first day of May, 1879, by and between the Mobile and Ohio Railroad Com-

pany, a body politic and corporate, duly created and existing under and by virtue of the laws of the States of Alabama, Mississippi, Tennessee and Kentucky, party of the first part, and William Butler Duncan, as surviving Receiver of the property of said company, duly appointed by and acting under the authority of the Circuit Court of the United States for the Southern District of Alabama, and of the Circuit Court of the United States for the Western District of Tennessee, and of other Courts of the United States, party of the second part, William H. Hays and T. Haskins Du Puy (survivors of William S. Pierson, deceased), as the agents, assignees and attorneys of creditors of said corporation, and as a "Committee of Reorganization" under the agreement and transfer of October 1st, 1876, hereinafter mentioned, parties of the third part, and The Farmers' Loan and Trust Company, a body politic and corporate, duly created and existing under and by virtue of the laws of State of New York, and authorized to execute the trusts hereby created and herein expressed, party of the fourth part. 161 Parti 162 163

Whereas, the said The Mobile and Ohio Railroad Company was, by an Act of the Legislature of the State of Alabama, approved the third day of February, 1848, created a body politic and corporate, and by that name was, among other things, vested with all the powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of said Act; and Recitals. Alabama Incorporation.

Whereas, said Act was amended by an Act passed by the Legislature of the State of Alabama on the 5th day of January, 1850; and 164

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Mississippi, approved February 17th, 1848, which Act was amended on the 4th of March, 1850, granted within the State of Mississippi the same rights, powers and Mississippi Incorporation.

privileges as had been and are granted within the State of Alabama by the Legislature of the State of Alabama to the said Railroad Company, with certain exemptions which appear in said Act of the Legislature of the State of Mississippi, and the amendment thereto; and

Tennessee Incorporation.

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Tennessee, approved February 28th, 1848, created a body politic and corporate within the State of Tennessee, with the rights, powers, privileges and immunities in said Act specified; and

Kentucky Incorporation.

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Kentucky, approved February 26th, 1848, granted within the State of Kentucky all the privileges, rights and immunities granted and belonging to the said Railroad Company within the State of Alabama; and

First Mortgage, 1853.

Whereas, the said Railroad Company, on or about the first day of November, 1853, in and by a certain indenture of mortgage or deed of trust duly executed by it under its corporate seal, bearing date on that day, granted and conveyed the property therein described to Morris Ketchum, John J. Palmer, and William R. Hallett, as trustees, for the purpose of securing the payment of an issue of bonds in said mortgage or deed of trust described; and

Whereas, a large number of the bonds in and by the said mortgage or deed of trust described and secured, were afterwards issued by said Railroad Company and put in circulation, with coupons for interest payable semi-annually thereto attached; and

Second Mortgage, 1860.

Whereas the said Railroad Company, on or about the fifteenth day of February, 1860, by a certain indenture of mortgage or trust deed known as the second mortgage, bearing date on that day, duly exe-

cuted by said Company under its corporate seal, granted and conveyed the property therein described, to Robert A. Baker, George H. Young and Samuel Williams, as trustees, for the purpose of securing the payment of the particular issue of bonds therein described: and 169

Whereas, a large number of the bonds in said mortgage of 1860 described and provided for, were afterwards issued and put in circulation by said Railroad Company; and

Whereas, the said Railroad Company, on or about the first day of July, 1871, in and by a certain other indenture of mortgage or trust deed, bearing date on that day, granted and conveyed the property therein described (the same being situate within the limits of the State of Tennessee), to William Butler Duncan, Adrian Iselin and Richard T. Wilson, as trustees, for the purpose of recognizing and declaring the lien, and securing the payment of the issue of bonds in said mortgage or deed of trust of July 1st, 1871, mentioned; and 180 Tennessee Substitution Mortgage 1871. 171

Whereas, said bond in said mortgage of July 1st, 1871, described and provided for were afterwards issued and put in circulation; and

Whereas, the said Railroad Company, on or about the first day of January, 1874, in and by a certain other indenture of mortgage or deed of trust, bearing date on that day, granted and conveyed the property therein described to William Butler Duncan and Samuel L. M. Barlow, as trustees, for the purpose of securing the payment of the several issues of bonds in said mortgage or deed of trust of January 1st, 1874, described; and Consolidated Mortgage, 1874. 172

Whereas, W. Butler Duncan and A. Foster Elliott became duly substituted in the place and stead of Morris Ketchum, Jno. J. Palmer and W. R. Hallett, as trustees, of the mortgage first herein above described or referred to; and Trustees Substituted.

173 Whereas, on or about the 8th day of May, 1875, the said W. Butler Duncan and A. Foster Elliott, as trustees under said mortgage of 1853, took possession of the mortgaged property therein described, and afterwards commenced suits in the Circuit Court of the United States for the Southern District of Alabama and in other courts for the foreclosure of said mortgage of 1853, and for the sale of the mortgaged property; and

First Foreclosure suit.

174 Whereas, on the 14th day of March, 1876, another suit was brought in the said first-mentioned court by said Morris Ketchum, claiming to be trustee under said first mortgage, to foreclose the same, and for the sale of the mortgaged property; and

Second Foreclosure Suit.

Whereas, on the 2d day of April, 1877, another suit was brought in the same court by D'Oreli Ziegler and others, claiming to be the holders of mortgage bonds issued under and secured by said mortgage of 1853, to foreclose said mortgage of 1853, and for the sale of the mortgaged property; and

Third Foreclosure Suit.

175 Whereas, said several actions were by an order of the said Circuit Court of the United States for the Southern District of Alabama, made on the 6th day of June, 1877, consolidated, and pursuant to said order of said actions, as so consolidated, proceeded to a decree which was rendered by said Circuit Court of the United States for the Southern District of Alabama on the 15th day of June, 1877, which said decree was afterwards on or about the 30th day of May, 1878, affirmed by the Supreme Court of the United States; and

Consolidation of Suits.

Decree in Consolidated Suits

176 Whereas, on or about the 27th day of May, 1875, a suit was brought by W. Butler Duncan, Adrian Iselin and Richard T. Wilson, in the Circuit Court of the United States for the Western District of Tennessee, for the purpose of enforcing the lien declared in and recognized by the said mortgage of 1871, and for the sale of the mortgaged property therein described; and

Foreclosure Suit under Tennessee Substituted Lien.

Whereas, said last-mentioned suit proceeded to final decrees, which were rendered by said Circuit Court of the United States for the Western District of Tennessee, on the 20th day of May, 1876, and on the 12th day of November, 1877; and

177 Decree in Tennessee Suits.

Whereas, nearly all the holders of the outstanding bonds secured by the said several mortgages or deeds of trust, and by the said decrees of the said Courts, as well as nearly all the holders of other evidences of debt issued by the said Railroad Company, and of other claims outstanding against said Railroad Company, did in and by and pursuant to an agreement and transfer, bearing date October 1st, 1876, assign and transfer their respective claims and demands, and deliver the possession thereof, to said William H. Hays, William S. Pierson and T. Haskins Du Puy, of whom the said Hayes and Du Puy are the survivors, to which agreement and transfer of October 1st, 1876, reference is hereby made, as if the same were herein recited; and

178 Claims assigned to Committee of Reorganization.

Whereas it was agreed between the said Hays, Pierson and Du Puy, and the said Railroad Company, that the said Railroad Company should issue and deliver to said Hays, Pierson and Du Puy, and their survivors or successors, new bonds and debentures, in which should be expressed the sums of principal money and interest which, upon the conditions and contingencies herein expressed, should be received and taken in full payment and discharge of the claims so as aforesaid assigned to said Hayes, Pierson and Du Puy, but which, in the meantime, before the happening of such contingencies, are to be considered as evidence of the sums payable by said Railroad Company, in order finally to obtain the full benefit of the agreements of compromise, extension and forbearance herein mentioned, and of the time at which, and the conditions upon which, such sums are to become payable; and

179 Issue of New Securities to Committee of Reorganization.

180

181 Whereas the said William H. Hayes, William S. Pierson and T. Haskins Du Puy, by virtue of the authority conferred upon them by said agreement and transfer of October 1st, 1876, agreed upon a compromise, extension and forbearance of the said claims so transferred to and held by them as aforesaid, and so have agreed to accept said new bonds and debentures upon the conditions herein expressed, the terms of which compromise, extension and forbearance are as follows, namely: (1) that so far as said Railroad Company shall pay or cause to be paid the principal sums expressed in the bonds or debentures provided for by said agreement of October 1st, 1876, or the interest accruing thereon, pursuant to the terms of said bonds and the coupons thereto attached, and pursuant to the terms of the said debentures, such payments shall, in any event, be applied in extinguishment and discharge of an equal amount of the said indebtedness as aforesaid assigned to said Hayes, Pierson and Du Puy; (2) that in case all lawful claims against said Railroad Company which have arisen prior to the date of this instrument, and which have not yet been assigned to said Hays, Pierson and Du Puy, shall be assigned and transferred to said Hays and Du Puy, or their successors, or to the said The Farmers' Loan and Trust Company, under and pursuant to said agreement of October 1st, 1876, or in any manner satisfied, cancelled or extinguished by said Railroad Company, or out of its property or income, or otherwise, then all the claims so assigned and transferred shall thenceforth be deemed to have been paid and satisfied by the new bonds and debentures herein mentioned, and such assigned claims shall be, then and in that case, for all purposes and intents, cancelled and extinguished, and the said Railroad Company released therefrom; (3) that the said Hays and Du Puy, and their successors, and The Farmers' Loan and Trust Company shall not

Agreement of Compromise, Extension & Forbearance.

182

When Existing Liens partially Satisfied.

183

When Existing Liens Finally Satisfied.

184

nor shall either of them enforce or put in execution against said Railroad Company either of the said decrees, nor any of said assigned claims, so long as payment of the interest and principal mentioned in said new bonds, coupons and debentures, respectively, shall be made as aforesaid, unless the property of said Railroad Company, or some portion thereof, shall be exposed for sale, attached, seized, sequestrated or taken for the purpose of being applied towards satisfying some claim secured by some one of said decrees and not assigned pursuant to said agreement of October 1st, 1876, or some claim against said Railroad Company which has not been so assigned or transferred, and which has arisen prior to the date of this instrument, but (4) that upon default in the payment of said last-mentioned interest or principal, or upon the property of said Railroad Company, or any part thereof, being exposed for sale, attached, seized, sequestrated or taken for the purpose of being applied towards satisfying any claim secured by any one of said decrees, and not assigned pursuant to said agreement of October 1st, 1876, or any claim against said Railroad Company which has not been so assigned or transferred, and which has arisen prior to the date of this instrument, then said Hays and Du Puy, and their successors and assigns, holders of said claims so assigned may enforce said assigned claims and said decrees (so far as the same remain unsatisfied) for the benefit of the holders of the said new bonds and debentures, as if such holders of said new bonds and debentures were still entitled respectively to the proceeds of said assigned claims to the same extent as when the same were respectively assigned, except so far as such claims shall have been in fact paid under the operation of said agreements; (5) that until said claims so assigned shall be satisfied in manner aforesaid and pursuant to the terms

185

Agreement of Forebearance.

186

187

188

Power to Enforce Decrees.

189 aforesaid, the several and respective holders of the new bonds and debentures provided to be issued as aforesaid, shall be beneficially interested in said assigned claims and the proceeds thereof, and the amounts of money or property collectible or realizable thereon or purchaseable or purchased therewith, in the same proportions and according to the same order and priority in which they are, or may be, from time to time, interested in said new bonds and debentures; (6) that after satisfaction of the

Interest of New Securities in Existing Liens.

190 said new bonds so to be issued in case the same shall be satisfied by means of a sale, the remaining proceeds of said sale shall be appropriated to the use and benefit of the holders of said debentures, according to the order and priority of such debentures, as fixed by said agreement of Oct. 1, 1876; (7) that in case said decrees, or either of them, shall be enforced, and a sale shall be made of any of the property covered thereby, the said assigned claims shall and may, so far as they may remain unsatis-

Disposition of Proceeds of Sale.

191 fied, be used and appropriated according to the terms and provisions of said decrees respectively in the purchase of the property so brought to sale, and that thereupon the title so acquired by such use and appropriation of such assigned claims shall become and be subject to the lien of this mortgage and the bonds secured thereby, and also to the lien, operation, and effect of the deeds of trust made simultaneously herewith for the benefit of the holders of preferred income and sinking fund de-

Authority to use Existing Liens to Purchase.

192 bentures; and

Whereas said new bonds are now about to be issued accordingly, and are to be substantially in the following form:

(Form of Bond.)

"The Mobile & Ohio Railroad Company acknowledges itself to be indebted to the bearer, or to

the registered holder hereof, for value received, in 193
the sum of one thousand dollars in gold coin of the United States of the present standard of weight and fineness, and hereby promises to pay such sum to the bearer hereof, or to the registered holder hereof, at its agency in the City of New York, on the first day of December, A. D. 1927, and also meanwhile to pay the interest thereon at the rate of six per cent. per annum, as expressed in the coupons herewith issued, on the first days of June and Decem- Form of Bond.
ber respectively in each year, on the presentation 194
of the said coupons as they severally become due.

"This bond is issued under and in pursuance of certain agreements for the compromise, extension and forbearance of the original indebtedness of the said The Mobile & Ohio Railroad Company, and is not received by the holder in payment or extinguishment of such original indebtedness in whole or in part, except as provided for in and by the agreements and mortgage herein referred to; and it is one
of an issue amounting in the aggregate to seven mil- 195
lions of dollars principal money, and is entitled to the benefit and security of certain degrees establishing and adjusting such original indebtedness until such decrees shall be satisfied, cancelled or extinguished, as well as to the benefit of a mortgage made by the said The Mobile and Ohio Railroad Company to the Farmers' Loan and Trust Company, as Trustees, bearing even date herewith, and to the benefit of the covenants and conditions in said agreements,
decrees, and mortgage contained, and is issued sub- 196
ject to the rights given and conferred by said agreements, decrees, and mortgage, to all of which reference is hereby made. And it is agreed that in case payment of any of the coupons issued with this bond shall be refused upon presentation of such coupon as provided therein at or after the maturity of such coupon, and if such non-payment shall con-

tinue for the space of six months after such presentation, then and in that case the principal sum secured by this bond shall become and be immediately due and payable, anything herein contained to the contrary notwithstanding.

"The holder of this bond may, from time to time, have the same registered on the books of said Railroad Company, on payment of such fee therefor and under such regulations as the Company may establish, such registry being noted on the bond itself by the Company's transfer agent, after which no transfer shall be valid unless made on said books by the registered holder, in person or by attorney duly authorized, and simultaneously noted on the bond, but the same may be discharged from registry by being in like manner transferred to bearer, after which it shall be transferable by delivery. The registry of the bond as above shall not restrain the negotiability of the coupons by delivery, but the coupons may be surrendered and interest on the bond will thereafter be payable only to the registered holder of the bond.

"This bond shall not be entitled to the benefit of the security provided as above, nor operate against said Company as an evidence of debt or otherwise until there shall be endorsed hereon a certificate signed by the Farmers' Loan and Trust Company or its successors, identifying the same as being one of the bonds issued under the said mortgage of seven millions of dollars.

"In testimony whereof, the said The Mobile and Ohio Railroad Company has hereunto set its corporate seal and caused these presents to be attested by its President and Secretary, the day of 1879.

President."

Secretary."

(FORM OF COUPON): 201

"The Mobile & Ohio Railroad Co. will pay bearer, in any lawful money of the United States, the sum of thirty dollars, on the first day of , 18 , at the agency of the said Company, in the City of New York, or at Mobile, at the option of the holder hereof, being interest on mortgage bond, No.

Form of Coupon.

Treasurer."

202

And whereas it was agreed that the said bonds shall be issued to said Hays and Du Puy, as survivors of the said Pierson, and disposed of and appropriated by them pursuant to the terms of said agreement of October 1st, 1876, without, however, being received in present payment or extinguishment of the claims so assigned to said Hays, Pierson and Du Puy, in whole or in part, but being received by said Hays and Du Puy and disposed of under said agreement only as conditional payment and extinguishment of such claims, and to be final and full payment only upon the conditions above expressed; and it is also agreed by said Railroad Company with said Hays, Pierson and Du Puy that in case any of the property of the said Railroad Company shall be taken or seized in execution or by any creditor for the purpose of sale, or for the purpose of satisfying the claims of such creditor, or in case any person who has failed or omitted or refused to transfer or assign his claim to the said Hays, Pierson and Du Puy, or to the survivors of them or their successors, and who is entitled to the benefit of either of said decrees, shall insist upon and succeed in bringing to execution either of the said decrees; or in case that said Railroad Company shall make default in the payment of the interest on any of the said bonds, of

New Securities Not Received in Present Payment.

203

When Received in Final Payment.

In case of Refusal to Join Reorganization.

204

205 which the form is hereinabove set forth, and such interest shall remain in arrear and unpaid for the space of six months; or in case said railroad company shall make default in the payment of the principal of any of the said bonds of which the form is above set forth, then, in any or either such cases, the said indebtedness, as well that secured by the mortgages and decrees hereinbefore recited, as the other indebtedness and claims assigned to said Hays, Pierson and Du Puy, or the survivors of them or 206 their successors, so far as the same shall not previously have been cancelled, satisfied, reduced or extinguished, may, upon an equal footing as to grade and priority of security with the holders of like or correspondent claims not assigned to the said Hays, Pierson and Du Puy, or the survivors of them or their successors, be immediately enforced in full for the benefit of the holders of the new bonds and debentures; and

In Case of Default.

Relative Position of Claims.

207 Whereas the said railroad company has also issued and delivered simultaneously herewith a trust deed to secure the payment of the four several series of debentures called for and specified in the said agreement of October 1st, 1876; and

Debenture Trust Deed.

Whereas the said William H. Hays, William S. Pierson and T. Haskins Du Puy, pursuant to the terms of the said agreement of October 1st, 1876, designated the Farmers' Loan and Trust Company, of the city of New York, to be the trustee under this mortgage:

Designation of Trustees.

208 Now this indenture witnesseth that the said party of the first part, in consideration of the premises and of the sum of one dollar to it in hand paid by said party of the fourth part, at or before the execution and delivery of these presents, the receipt whereof is hereby acknowledged, and by and with the consent of the said parties of the second and third parts, testified by their execution of these presents, hath

Consideration.

granted, bargained and sold, assigned, transferred, conveyed, released, and set over, and by these presents doth grant, bargain and sell, assign, transfer, release, convey and set over, unto the said party of the fourth part, and to its successors and assigns, in fee simple, all and singular the entire railroad of said party of the first part now acquired, constructed, completed, owned and possessed, extending from Mobile, in the State of Alabama, to Columbus, in the State of Kentucky, a distance of four hundred and seventy-two miles or thereabouts, together with the tracks of said railroad or roadway, as now existing or hereafter to be acquired, and the superstructure and rails laid and to be laid thereon, and all the appurtenances thereof, and all the sidings, turnouts, bridges, viaducts, culverts, ways and rights of way, and lands and premises whatsoever, with the improvements thereon, and all erections, fences, walls and fixtures belonging or appertaining to, or provided or used or intended to be used for the purposes of, or in connection with said railroad, and all the depots and stations and depot grounds now or hereafter belonging or appertaining to said railroad, and all lands and real estate provided, held, used or designated to be used for such depot grounds and all the building and repair shops, carhouses, engine houses and other buildings and structures whatsoever, belonging or appertaining to or used or designed to be used for or in connection with said railroad, and also all the present and future rolling stock of said railroad, and all locomotives, passenger cars, freight cars, and all other cars, carriages, tools, machinery, fuel, rails and materials, and things of whatsoever kind (whether for or in connection with the road itself or its rolling stock or equipment, or for work or machine shops, or construction or repairs of any kind) now belonging or appertaining to, or used, procured or designed for

Conveyance. 209

Description, 210

211

212

213 the purposes of said railroad, or the completion, maintenance or operation thereof, or hereafter procured, acquired or held for any such purpose, and also (except as hereinafter stated) all the lands and real estate situated in any of the said States of Alabama, Mississippi, Tennessee or Kentucky, with the appurtenances thereof, which the said party of the first part may hereafter acquire, for the purposes of or in connection with its above mentioned line of railroad, or any straightening or alteration of the line
214 of the same, o rfor the purposes of or designed for depot grounds or stations, or sites for shops, car houses or buildings, or improvements of any kind whatsoever, used or intended to be used for the purposes of the said railroad, and all and singular the franchises, easements, rights, privileges, interests and immunities, income, rents, tolls, profits, benefits and advantages belonging or appertaining to or connected with said Railroad Company, or to arise or accrue from the said railroad above described
215 and mortgaged, with its appurtenances, and the maintenance and operation thereof, and all property, both real and personal, of every kind and description, acquired and to be acquired in the said last-mentioned States for the uses and purposes of said railroad, including also all property in the possession of the Receivers appointed by either of the said Circuit Courts of the United States, which it is the intention and expectation of said Railroad Company to have delivered to it by permission of said
216 Circuit Courts, and which it covenants to hold, when possession thereof shall be delivered to it, subject to the liens hereby created and acknowledged, but not including in, and saving and excepting from this grant, transfer, assignment and mortgage, the several branches of said main line, heretofore possessed by said Railroad Company or by said Receivers, or which shall be hereafter acquired or constructed, and not including in, but excepting from,

Exemptions From Mortgage.

this mortgage the branches known respectively as 217
the Aberdeen Branch, Gainesville Branch, Starkville
Branch and Columbus Branch, and not including
in, but saving and excepting from, this mortgage all
unsold and unappropriated lands heretofore granted
to said Railroad Company by any of the States, or
by the United States, and all lands which may be
situated apart from the line of the road and not ac-
tually required for use or running of the road: To Habendum.
HAVE AND TO HOLD the said premises hereinabove
described to the said The Farmers' Loan and Trust 218
Company, and its successors in the trust hereby Trust.
created, for the benefit of the security and advant-
age of the holders of the bonds of which the form is
hereinbefore set forth, and of each and all of them;
provided, however, and these presents are upon the Proviso.
express condition, that if the said Railroad Com-
pany shall duly make punctual payment of the in-
terest warrants or coupons attached to said bonds
at the time and in the manner expressed in said
coupons, and shall punctually make payment of the 219
principal money expressed in said bonds, according
to the terms, conditions and tenor of said bonds, then
and from thenceforth this mortgage, and the estate
created thereby, is to cease, determine and be void;
and the said party of the first part, the said The
Mobile and Ohio Railroad Company, does hereby
covenant, grant and agree to and with the said party
of the fourth part, its successors and assigns, that
in case either of default in the payment of the said Covenants.
bonds at the maturity thereof, or in case of default 220
in payment of any of the coupons attached to any
of said bonds, and in case of such default in the
payment of coupons continuing for the space of six
months, or in case the holder of any bond issued Non-payment Bonds or Coupons.
under said mortgage of 1853, or of any other claim
entitled to the benefit of said decree of June 15,
1877, or to the benefit of either of the said decrees of

221 May 20, 1876, or November 12, 1877, and not assigned to said Hays, Du Puy and Pierson, or the survivors of them or their successors, shall insist upon and succeed in having either of said decrees enforced, or upon or in having said property or any part thereof sold or conveyed or exposed to sale, in or towards satisfaction of the claims established in and by such decrees, or either of them, or in case any of the property hereby mortgaged shall be seized or taken or exposed to sale under any execu-

Enforcement of Decrees or Sale.

222 tion or other legal process, then and in such contingency the said indebtedness so assigned to the said Hays, Pierson and Du Puy, or the survivors of them or their successors, and arising upon and secured by said mortgages and decrees, or either of them, so far as the same shall not have been previously satisfied, reduced or extinguished, and in case the same shall have been satisfied or extinguished then the indebtedness evidenced by said new bonds and coupons shall become and be capable of immediate

Enforcement of Claims assigned to Committee of Reorganization.

223 enforcement, notwithstanding any period of time which shall meanwhile have elapsed, and notwithstanding the said agreements for compromise, extension and forbearance; and the said party of the first part will and doth hereby waive the benefit of any extension, stay or appraisement laws which now do or may hereafter exist; and in either of the cases last provided for it shall and may be lawful for the said party of the fourth part, its successors and assigns, to enter into and take possession of all

224 and singular the lands, premises, rights, property, and franchises specified and described in or affected by said decrees, so far as said decrees shall not have been satisfied, cancelled, released or extinguished, and so far as the same shall have been satisfied, cancelled, released, or extinguished, then to enter upon and take possession of the property hereby mortgaged, and to hold the property so taken and entered upon for the benefit of the holders of the

Authority to Trustees to take Possession.

bonds specified in said decrees, according to their 225
respective rights and priorities as established by said decrees, so far as said decrees shall not have been released, satisfied, cancelled, or extinguished; and if such decrees shall have been released, cancelled, satisfied or extinguished, then for the benefit of the holders of the bonds secured hereby; and the said property and real estate so entered upon and taken possession of, and the tolls and income thereof, are to remain in the possession and under the control of the said party of the fourth part, its 226
successors and assigns; and the said party of the fourth part, its successors and assigns, may directly Authority to trustees to Manage.
and through the agency of such person or persons as it or they may appoint receive and collect the tolls, income and profits or the same, and may sell all of the said road remaining subject to the operation of any of said decrees and all property hereby mortgaged, conveyed and assigned, or intended so to be, and all property subject to the operation of any of said decrees so far as such decrees remain in 227
force, and all benefit and equity of redemption of Authority to Trustees to Sell.
said Railroad Company, at public auction, giving reasonable public notice of the time and place of sale, and may in all respects execute the said decrees of June 15th, 1877, May 20th, 1876, and Nov. 12th, 1877, respectively, so far as the same may then remain in force, and may, so far as the said decrees shall not have been released, reduced, satisfied, extinguished or cancelled, apply without further notice to the said party of the first part, to the 228
courts by which said decrees were rendered respectively, for processes and orders to enforce said decrees to the extent to which the same remain unsatisfied, and to that extent may in all respects Disposition of Proceeds of Sale.
avail itself the benefit and advantage of said decrees, and appropriate the proceeds of such sale, whether made under either or all of said decrees

229 or under this mortgage, and the income, receipts and tolls of said property, to the payment of the bonds secured by the said decrees respectively, according to the order and priority specified in and described by said decrees, so far as such decrees may be in force, and otherwise to the payment of the bonds secured hereby. And, in so far as the said party of the fourth part, its successors or assigns, shall be holders of any of the bonds or securities specified in said decrees and assigned to
230 said Hays, Pierson and Du Puy or the survivors of them or their successors, and as such holders entitled to the proceeds of any sales made under said decrees or either of them, such proceeds, so far as received in money, shall be held and received by it for the benefit and security of the holders of said bonds now issued or intended to be issued, and of which the form is as above set forth, such proceeds to be distributed ratably and proportionately among the holders of said last-mentioned bonds according

231 Distribution of Proceeds of Sale if under Present Decrees, among Holders of New Securities.

to the amount of principal and interest then due or to become due and payable upon said bonds; and in case said assigned claims shall to any extent be used and made available in the purchase of the said property or any part thereof, under either or any of said decrees then the title so acquired shall be deemed to have been acquired subject to this mortgage and to said trust deed made simultaneously herewith, in like manner and with the same effect as if this mortgage and said trust deed and said

Destination of Title, if Purchased by Trustees with Assigned Claims.

232 new bonds and debentures had been made and given by the purchaser in payment of so much purchase money to the holders of said new bonds and debentures upon such purchase; and upon a sale being made under or by virtue of this mortgage or by virtue of said decrees or either of them, the said party of the fourth part and its successors and assigns are hereby authorized, as the attorney or attorneys of the said The Mobile and Ohio Railroad

Company, for that purpose by these presents duly constituted, to make and deliver to the purchaser or purchasers of said property a good and sufficient deed or deeds of conveyance of the premises so conveyed, and proper transfers and assignments of the said property to make and deliver, deducting first out of the moneys received either from the income or profits of said road or from the mortgaged property herein described or from the sale thereof, the expenses of carrying on the business of the road, and keeping the same in repair, together with the costs, charges and counsel fees incurred in the proceedings, and a reasonable compensation to the said party of the fourth part for its services; and the sale so made shall be a perpetual bar, both at law and in equity, against the said party of the first part and all persons claiming by, from or under them. And the said The Mobile and Ohio Railroad Company hereby covenants and agrees to and with the said party of the fourth part, it successors or assigns, that it will make, execute and deliver all such further assurances or instruments as may be at any time, or from time to time, hereafter necessary for the further security of the holders of said bonds, of which the form is hereinbefore set forth. And the said party of the second part does hereby covenant, promise and agree to and with the said parties of the first, third and fourth parts, and each of them, that when and so soon as he shall be duly authorized so to do, he will deliver the property of the said Railroad Company in his keeping, custody or charge, to the said Railroad Company, subject to the liens, trusts and covenants herein expressed and hereby created.

233

Delivery of Deeds.

234

235

Surrender of Property by Receiver.

236

It is hereby mutually agreed that the holders of a majority in amount of the outstanding bonds so about to be issued as aforesaid, may by an instrument or concurrent instruments in writing under the

hands and seals of themselves or their respective attorneys in fact thereto authorized, remove from the trusteeship hereunder any trustee other than the original Trustee herein named, whether such substituted Trustee shall have been appointed by a Court or in any other manner, and may by the same instrument or instruments, or separate instrument and concurrent instruments, appoint a Trustee in the place of the one so removed; and such majority in amount of such bondholders may by a concurrent instrument, executed in like manner, appoint a Trustee or Trustees to fill a vacancy which may have been created or may at any time exist, and any appointment of such new Trustee or Trustees made by the holders of the majority in amount of such outstanding bonds, in the manner aforesaid in either of the cases aforesaid, shall be valid and effectual; and such Trustee shall be vested with the like interests, estates, trusts and powers, and be subject to the like duties and obligations hereby given, granted and assumed, to and by the said party of the fourth part.

Authority to Remove Substituted Trustee or Fill Vacancy.

And it is further mutually agreed that in case any of the property, whether real or personal, to which this mortgage attaches, or is intended to attach, shall at any time cease to be available or useful in the operation of the said railroad, or in the carrying on of the business of said Railroad Company, or shall become more valuable for the purpose of being disposed of by sale than for the purpose of being retained in use or operation, or as a part of the capital and resources or the said party of the first part, and the said party of the first part shall be able to find a purchaser or purchasers therefor at its fair value, then said party of the fourth part may, in its discretion, unite with the said party of the first part in such sale and conveyance of such property, free from the lien, operation and effect of this mortgage, upon such terms and conditions as

Authority to Release from Lien.

to the receipt, appropriation, disbursemene and expenditure of the proceeds of such sale and conveyance as said party of tho fourth part may, in its discretion and acting in the interest and for the security of said bondholders, deem advisable and consen' to; and it having been already above provided by the terms of this mortgage that any future acquired property of said party of the first part shall be acquired and be subject to the lien, operation and effect of this mortgage, it is further specially declared that the intent of the last foregoing covenant is to extend the lien, operation and effect of this mortgage, to any and all real estate and personal property which may be from time to time hereafter acquired by said party of the first part, in lieu of or in substitution for any property which shall be released as aforesaid from the lien, operation and effect of this mortgage, and also to subject to the lien, operation and effect of this mortgage, the proceeds of any property which may be sold or released as aforesaid, and any property which may be purchased or acquired with the proceeds of the sale of any such property so sold and released. But, notwithstanding anything hereinbefore contained, it is understood and agreed that in case the said railroad company shall acquire property not now owned by it, for the purpose of extending its present road, or building a branch road or connecting road, it may, for the purpose of obtaining means to acquire such extension, branch or connection, and to put such extension branch or connection in operating condition, and of equipping the same for use and business, mortgage such branch, extension or connection, with its equipment and appurtenances, and such mortgage so made may be prior to the lien of this mortgage.

241

Extension of Lien.

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244

It is also hereby further mutually agreed that in the discharge of the duties imposed by this inden-

Limitation of Liability.

245 ture, said party of the fourth part and its successors shall not be charged with liability by reason of any acts done or omitted in good faith in the exercise of reasonable diligence, judgment and discretion.

In witness whereof, the said parties of the first and fourth parts have hereunto set their respective corporate seals, and caused these presents to be attested by their respective officers thereunto duly authorized, and the said parties of the second and third parts have hereunto set their hands and seals the day and year first above written.

Attestation.

246

THE MOBILE AND OHIO RAILROAD
[SEAL.] COMPANY, by
(Sgd.) A. L. RIVES,
Vice-President.
(Sgd.) A. L. WILLOUGHBY,
Secretary
(Sgd.) W. BUTLER DUNCAN, [L. S.]
247 *Surviving Receiver.*
(Sgd.) W. H. HAYS. [L S.]
(Sgd.) T. HASKINS DUPUY. [L. S.]
THE FARMERS' LOAN AND TRUST
[SEAL.] COMPANY,
(Sgd.) by R. G. ROLSTON,
President.
Attest: GEO. P. FITCH.
Secretary.

248

STATE OF NEW YORK } ss: 249
City and County of New York. }

I. CHARLES NETTLETON, Commissioner of Deeds, of each of the States of Alabama and Mississippi, in New York, residing in said City of New York, do certify that William H. Hays and T. Haskins Du Puy, and also William Butler Duncan, Receiver, &c., whose name are respectively signed to the foregoing instrument, and who are each known to me, personally appeared before me and acknowledged before me on this day that, being informed of the 250 contents of said instrument, they respectively executed the same voluntarily on the day the same bears date, and that they had signed, sealed and delivered the foregoing instrument on the day and year therein named as their voluntary act and deed, each respectively.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 22d day of May, 1879.

251

[SEAL.] (Sgd.) CHARLES NETTLETON,
Commissioner for Alabama in New York,
117 Broadway, New York City.
(Sgd.) CHARLES NETTLETON, [SEAL.]
Commissioner for Mississippi in New York.

STATE OF NEW YORK, } ss.:
City and County of New York, }

I, CHARLES NETTLETON, a Commissioner of each of the States of Kentucky and Tennessee for New 252 York, residing in said City of New York, do certify that the foregoing instrument from the Mobile & Ohio Railroad Company to the Farmers' Loan & Trust Company, by and with the consent of William H. Hays and T. Haskins Du Puy, and by and with the consent of William Butler Duncan, Receiver, &c., was this day produced to me by the said Wil-

253 liam H. Hays, T. Haskins Du Puy and William Butler Duncan, Receiver, and acknowledged by the said William H. Hays, T. Haskins Du Puy and William Butler Duncan, Receiver, respectively, with whom I am personally acquainted, to be their act and deed, and they each acknowledged that they respectively executed the same for the uses and purposes therein contained.

In witness whereof, I have hereunto set
254 [L. S.] my hand and affixed my official seal, this 22d day of May, 1879.

[SEAL.] (sgd.) CHARLES NETTLETON,
Commissioner for Kentucky in New York.
117 Broadway, N. Y.

[SEAL.] (sgd.) CHARLES NETTLETON,
Commissioner for Tennessee in New York.

State, City and County of New York, ss.:

255 Be it remembered, that on this 22d day of May, A. D. 1879, before me, Charles Nettleton, a Commissioner of Deeds of each of the States of Alabama and Mississippi for the State of New York, residing in said City of New York, personally appeared Rosewell G. Rolston, the President of The Farmers' Loan and Trust Company, to me personally known to be such, who being by me duly sworn did depose and say that he resided in the City and State of New York; that he was the President of the said
256 Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order as the President of said The Farmers' Loan and Trust Company. And the said Rosewell G. Rolston, being personally known to me

to be the individual within described, acknowledged 257
to me that he had executed the foregoing instrument as the free act and deed of the said Farmers' Loan and Trust Company, freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal this 22d day of May, A. D. 1879.

[SEAL.] (sgd) CHARLES NETTLETON, 258
Commissioner for Alabama in New York.
117 Broadway, N. Y. City.

[SEAL.] (sgd) CHARLES NETTLETON,
Commissioner for Mississippi in New York.

State, City and County of New York, ss.:

Be it remembered, that on this 22d day of May, A. D. 1879, before me, Charles Nettleton, a Commissioner of Deeds of each of the States of Ken- 259
tucky and Tennessee for the State of New York, residing in said City of New York, personally appeared Rosewell G. Rolston, the President of the Farmers' Loan and Trust Company, to me personally known to be such, who being by me duly sworn did depose and say that he resided in the City and State of New York; that he was the President of the said Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; 260
that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order as the President of said The Farmers' Loan and Trust Company. And the said Rosewell G. Rolston, the President aforementioned, with whom I am personally acquainted, acknowledged to me that he had exe-

261 cuted the foregoing instrument as the act and deed of said The Farmers' Loan and Trust Company, for the purposes therein contained.

In witness whereof, I have hereunto set my hand and affixed my official seal this 22d day of May, A. D. 1879.

[SEAL.] (sgd) CHARLES NETTLETON,
Commissioner for Kentucky in New York,
262 117 Broadway, N. Y. City.

[SEAL.] (sgd) CHARLES NETTLETON,
Commissioner for Tennessee in New York.

THE STATE OF ALABAMA, }
County of Mobile. }

Be it remembered, that on this 7th day of June, A. D. 1879, before me, Samuel C. Muldon, a Notary Public, in and for the Port of Mobile and
263 County of Mobile and State of Alabama, residing in the Port of Mobile, and as Commissioner for the State of Mississippi to take the acknowledgments of deeds, &c., personally appeared A. L. Rives, Vice-President of the Mobile and Ohio Railroad Company, to me personally known to be such, who being by me duly sworn did depose and say that he is the Vice President of the Mobile and Ohio Railroad Company; that he knows the corporate seal of said company; that the seal affixed to the fore-
264 going instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said company, and that he signed his name thereto by the like order as the Vice President of the said The Mobile and Ohio Railroad Company; and the said A. L. Rives, being personally known to me to be the individual described, acknowledged to me that he had executed the foregoing instru-

ment as the free act and deed of the said The Mobile 265
and Ohio Railroad Company, freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I hereunto set my hand as Notary Public for the port of Mobile and County of Mobile, State of Alabama, and set my hand and official seal as Commissioner for the State of Mississippi, this 7th day of June, A. D. 1879. 266

[SEAL.] (sgd) SAML. C. MULDON,
Notary Public,
Mobile Co.

[SEAL.] (sgd) SAML. C. MULDON,
A Commissioner for Mississippi in Alabama.

THE STATE OF ALABAMA, }
Mobile County. }

Be it remembered, that on this 7th day of June, 267
A. D. 1879, before me, Saml. C. Muldon, Commissioner of Deeds of each of the States of Tennessee and Kentucky residing in the Port of Mobile, personally appeared A. L. Rives, Vice-President of the Mobile and Ohio Railroad Company, to me personally known to be such, who being by me duly sworn, did depose and say that he resides in the Port of Mobile: that he is the Vice-President of the said company; that he knows the corporate seal of said company; that the seal affixed to the 268
foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said company, and that he signed his name thereto by the like order as the Vice President of the said The Mobile and Ohio Railroad Company. And the said A. L. Rives before mentioned, with whom I am personally acquainted,

269 acknowledged to me that he had executed the foregoing instrument as the free act and deed of the said The Mobile and Ohio Railroad Company, freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, I hereunto set my hand and affix my official seals this the 7th day of June, A. D. 1879.

270 [SEAL.] (sgd) SAML. C. MULDON,
A Commissioner for Tennessee in Alabama.

[SEAL.] (sgd) SAML. C. MULDON,
A Commissioner for Kentucky in Alabama.

271

PREFERRED INCOME AND SINKING FUND DEBENTURE.

TRUST DEED.

Dated May 1, 1879.

272

THE FARMERS' LOAN AND TRUST CO., TRUSTEES.

Date. *This Indenture*, made this first day of May, 1879, by and between the Mobile and Ohio Railroad Company, a body politic and corporate, duly created and existing under and by virtue of the laws of the

273 States of Alabama, Mississippi, Tennessee and Kentucky, party of the first part, and William Butler Duncan, as surviving Receiver of the property of said company, duly appointed by and acting under the authority of the Circuit Court of the United States for the Southern District of Alabama, and of the Circuit Court of the United States for the Western District of Tennessee, and of other Courts of the United States, party of the second part, William H. Hays and T. Haskins Du Puy (survivors of William S. Pierson, deceased), as the agents, assignees and attorneys of creditors of said corporation, and as a "Committee of Reorganization" under the agreement and transfer of October 1st, 1876, hereinafter mentioned, parties of the third part, and The Farmers' Loan and Trust Company, a body politic and corporate, duly created and existing under and by virtue of the laws of State of New York, and authorized to execute the trusts hereby created and herein expressed, party of the fourth part.

Parties.

274

275 Whereas, the said The Mobile and Ohio Railroad Company was, by an Act of the Legislature of the State of Alabama, approved the third day of February, 1848, created a body politic and corporate, and by that name was, among other things, vested with all the powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of said Act; and

Recitals.

Alabama Incorporation.

Whereas, said Act was amended by an Act passed by the Legislature of the State of Alabama on the 5th day of January, 1850; and

276

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Mississippi, approved February 17th, 1848, which Act was amended on the 4th of March, 1850, granted within the State of Mississippi the same rights, powers and

Mississippi Incorporation.

277 privileges as had been and are granted within the State of Alabama by the Legislature of the State of Alabama to the said Railroad Company, with certain exemptions which appear in said Act of the Legislature of the State of Mississippi, and the amendment thereto; and

Tennessee Incorporation.

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Tennessee, approved February 28th, 1848, created a body politic and corporate within the State of Tennessee, with
278 the rights, powers, privileges and immunities in said Act specified; and

Kentucky Incorporation.

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Kentucky, approved February 26th, 1848, granted within the State of Kentucky all the privileges, rights and immunities granted and belonging to the said Railroad Company within the State of Alabama; and

First Mortgage, 1853.

Whereas, the said Railroad Company, on or about the first day of November, 1853, in and by a
279 certain indenture of mortgage or deed of trust duly executed by it under its corporate seal, bearing date on that day, granted and conveyed the property therein described to Morris Ketchum, John J. Palmer, and William R. Hallett, as trustees, for the purpose of securing the payment of an issue of bonds in said mortgage or deed of trust described; and

Whereas, a large number of the bonds in and by the said mortgage or deed of trust described and
280 secured, were afterwards issued by said Railroad Company and put in circulation, with coupons for interest payable semi-annually thereto attached; and

Second Mortgage, 1860.

Whereas the said Railroad Company, on or about the fifteenth day of February, 1860, by a certain indenture of mortgage or trust deed known as the second mortgage, bearing date on that day, duly exe-

cuted by said Company under its corporate seal, granted and conveyed the property therein described, to Robert A. Baker, George H. Young and Samuel Williams, as trustees, for the purpose of securing the payment of the particular issue of bonds therein described: and 281

Whereas, a large number of the bonds in said mortgage of 1860 described and provided for, were afterwards issued and put in circulation by said Railroad Company; and

Whereas, the said Railroad Company, on or about the first day of July, 1871, in and by a certain other indenture of mortgage or trust deed, bearing date on that day, granted and conveyed the property therein described (the same being situate within the limits of the State of Tennessee), to William Butler Duncan, Adrian Iselin and Richard T. Wilson, as trustees, for the purpose of recognizing and declaring the lien, and securing the payment of the issue of bonds in said mortgage or deed of trust of July 1st, 1871, mentioned; and 282 Tennessee Substitution Mortgage 1871. 283

Whereas, said bond in said mortgage of July 1st, 1871, described and provided for were afterwards issued and put in circulation; and

Whereas, the said Railroad Company, on or about the first day of January, 1874, in and by a certain other indenture of mortgage or deed of trust, bearing date on that day, granted and conveyed the property therein described to William Butler Duncan and Samuel L. M. Barlow, as trustees, for the purpose of securing the payment of the several issues of bonds in said mortgage or deed of trust of January 1st, 1874, described; and Consolidated Mortgage, 1874. 284

Whereas, W. Butler Duncan and A. Foster Elliott became duly substituted in the place and stead of Morris Ketchum, Jno. J. Palmer and W. R. Hallett, as trustees, of the mortgage first herein above described or referred to; and Trustees Substituted.

285 Whereas, on or about the 8th day of May, 1875, the said W. Butler Duncan and A. Foster Elliott, as trustees under said mortgage of 1853, took possession of the mortgaged property therein described, and afterwards commenced suits in the Circuit Court of the United States for the Southern District of Alabama and in other courts for the foreclosure of said mortgage of 1853, and for the sale of the mortgaged property; and

First Foreclosure suit.

286 Whereas, on the 14th day of March, 1876, another suit was brought in the said first-mentioned court by said Morris Ketchum, claiming to be trustee under said first mortgage, to foreclose the same, and for the sale of the mortgaged property; and

Second Foreclosure Suit.

Whereas, on the 2d day of April, 1877, another suit was brought in the same court by D'Oreli Ziegler and others, claiming to be the holders of mortgage bonds issued under and secured by said mortgage of 1853, to foreclose said mortgage of 1853, and for the sale of the mortgaged property; and

Third Foreclosure Suit.

287 Whereas, said several actions were by an order of the said Circuit Court of the United States for the Southern District of Alabama, made on the 6th day of June, 1877, consolidated, and pursuant to said order of said actions, as so consolidated, proceeded to a decree which was rendered by said Circuit Court of the United States for the Southern District of Alabama on the 15th day of June, 1877, which said decree was afterwards on or about the 30th day of May, 1878, affirmed by the Supreme Court of the United States; and

Consolidation of Suits.

Decree in Consolidated Suits

288 Whereas, on or about the 27th day of May, 1875, a suit was brought by W. Butler Duncan, Adrian Iselin and Richard T. Wilson, in the Circuit Court of the United States for the Western District of Tennessee, for the purpose of enforcing the lien declared in and recognized by the said mortgage of 1871, and for the sale of the mortgaged property therein described; and

Foreclosure Suit under Tennessee Substituted Lien.

Whereas, said last-mentioned suit proceeded to 289
final decrees, which were rendered by said Circuit Decree in Tennessee Suits.
Court of the United States for the Western District of Tennessee, on the 20th day of May, 1876, and on the 12th day of November, 1877; and

Whereas, nearly all the holders of the outstanding bonds secured by the said several mortgages or deeds of trust, and by the said decrees of the said Courts, as well as nearly all the holders of other evidences of debt issued by the said Railroad Company, and of other claims outstanding against said 290
Railroad Company, did in and by and pursuant to Claims assigned to Committee of Reorganization.
an agreement and transfer, bearing date October 1st, 1876, assign and transfer their respective claims and demands, and deliver the possession thereof, to said William H. Hays, William S. Pierson and T. Haskins Du Puy, of whom the said Hayes and Du Puy are the survivors, to which agreement and transfer of October 1st, 1876, reference is hereby made, as if the same were herein recited; and

Whereas it was agreed between the said Hays, 291
Pierson and Du Puy, and the said Railroad Company, that the said Railroad Company should issue and deliver to said Hays, Pierson and Du Puy, and their survivors or successors, new bonds and debentures, in which should be expressed the sums Issue of New Securities to Committee of Reorganization.
of principal money and interest which, upon the conditions and contingencies herein expressed, should be received and taken in full payment and discharge of the claims so as aforesaid assigned to said Hayes, Pierson and Du Puy, but which, in the 292
meantime, before the happening of such contingencies, are to be considered as evidence of the sums payable by said Railroad Company, in order finally to obtain the full benefit of the agreements of compromise, extension and forbearance herein mentioned, and of the time at which, and the conditions upon which, such sums are to become payable; and

298 Whereas the said William H. Hayes, William S. Pierson and T. Haskins Du Puy, by virtue of the authority conferred upon them by said agreement and transfer of October 1st, 1876, agreed upon a compromise, extension and forbearance of the said claims so transferred to and held by them as aforesaid, and so have agreed to accept said new bonds and debentures upon the conditions herein expressed, the terms of which compromise, extension and forbearance are as follows, namely: (1) that so far as said Railroad Company shall pay or cause to be paid the principal sums expressed in the bonds or debentures provided for by said agreement of October 1st, 1876, or the interest accruing thereon, pursuant to the terms of said bonds and the coupons thereto attached, and pursuant to the terms of the said debentures, such payments shall, in any event, be applied in extinguishment and discharge of an equal amount of the said indebtedness as aforesaid assigned to said Hayes, Pierson and Du Puy; (2) that in case all lawful claims against said Railroad Company which have arisen prior to the date of this instrument, and which have not yet been assigned to said Hays, Pierson and Du Puy, shall be assigned and transferred to said Hays and Du Puy, or their successors, or to the said The Farmers' Loan and Trust Company, under and pursuant to said agreement of October 1st, 1876, or in any manner satisfied, cancelled or extinguished by said Railroad Company, or out of its property or income, or otherwise, then all the claims so assigned and transferred shall thenceforth be deemed to have been paid and satisfied by the new bonds and debentures herein mentioned, and such assigned claims shall be, then and in that case, for all purposes and intents, cancelled and extinguished, and the said Railroad Company released therefrom; (3) that the said Hays and Du Puy, and their successors, and The Farmers' Loan and Trust Company shall not

Agreement of Compromise, Extension & Forbearance.

294

When Existing Liens partially Satisfied.

295

296 When Existing Liens Finally Satisfied.

nor shall either of them enforce or put in execution against said Railroad Company either of the said decrees, nor any of said assigned claims, so long as payment of the interest and principal mentioned in said new bonds, coupons and debentures, respectively, shall be made as aforesaid, unless the property of said Railroad Company, or some portion thereof, shall be exposed for sale, attached, seized, sequestrated or taken for the purpose of being applied towards satisfying some claim secured by some one of said decrees and not assigned pursuant to said agreement of October 1st, 1876, or some claim against said Railroad Company which has not been so assigned or transferred, and which has arisen prior to the date of this instrument, but (4) that upon default in the payment of said last-mentioned interest or principal, or upon the property of said Railroad Company, or any part thereof, being exposed for sale, attached, seized, sequestrated or taken for the purpose of being applied towards satisfying any claim secured by any one of said decrees, and not assigned pursuant to said agreement of October 1st, 1876, or any claim against said Railroad Company which has not been so assigned or transferred, and which has arisen prior to the date of this instrument, then said Hays and Du Puy, and their successors and assigns, holders of said claims so assigned may enforce said assigned claims and said decrees (so far as the same remain unsatisfied) for the benefit of the holders of the said new bonds and debentures, as if such holders of said new bonds and debentures were still entitled respectively to the proceeds of said assigned claims to the same extent as when the same were respectively assigned, except so far as such claims shall have been in fact paid under the operation of said agreements; (5) that until said claims so assigned shall be satisfied in manner aforesaid and pursuant to the terms

297

Agreement of Forebearance.

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Power to Enforce Decrees.

aforesaid, the several and respective holders of the new bonds and debentures provided to be issued as aforesaid, shall be beneficially interested in said assigned claims and the proceeds thereof, and the amounts of money or property collectible or realizable thereon or purchaseable or purchased therewith, in the same proportions and according to the same order and priority in which they are, or may be, from time to time, interested in said new bonds and debentures; (6) that after satisfaction of the said new bonds so to be issued in case the same shall be satisfied by means of a sale, the remaining proceeds of said sale shall be appropriated to the use and benefit of the holders of said debentures, according to the order and priority of such debentures, as fixed by said agreement of Oct. 1, 1876; (7) that in case said decrees, or either of them, shall be enforced, and a sale shall be made of any of the property covered thereby, the said assigned claims shall and may, so far as they may remain unsatisfied, be used and appropriated according to the terms and provisions of said decrees respectively in the purchase of the property so brought to sale, and that thereupon the title so acquired by such use and appropriation of such assigned claims shall become and be subject to the lien of this mortgage and the bonds secured thereby, and also to the lien, operation, and effect of the deeds of trust made simultaneously herewith for the benefit of the holders of preferred income and sinking fund debentures; and

Interest of New Securities in Existing Liens.

Disposition of Proceeds of Sale.

Authority to use Existing Liens to Purchase.

Whereas, said debentures are to be in substantially the following form:

(*Form of Preferred Income and Sinking Fund Debentures.*)

This is to certify that is entitled to the sum of dollars out of the Sinking Fund created by the Mobile and

Ohio Railroad Company for the benefit of the holders of the several series of preferred income and sinking fund debentures issued by it, which sinking fund is created by and described in the deed of trust made by the said Railroad Company to the Farmers' Loan and Trust Company, bearing date the first day of May, 1879. The said sinking fund consists of the proceeds of the lands described in the said trust deed, and of the surplus income so far as directed by said deed of trust, which proceeds and surplus income are to be applied to the purchase of the said prrferred income and sinking fund debentures in the order of their priority and in the manner directed by the said deed of trust. Form of Debenture. 305 306

"This debenture is issued pursuant to the terms of certain agreements heretofore made by the said Railroad Company for the compromise, extension and forbearance of its former indebtedness, and it does not bear interest at any fixed annual rate; but whenever it shall be ascertained that the net earnings or income of any one year amount to one per cent. or a multiple of one per cent. upon the principal amount of debentures embraced in any one series of debentures, after providing for prior charges on the gross earnings, such net earnings or income for that year are to be applied, pursuant to the terms of said trust deed, to the payment of interest on such series of debentures, no one payment of interest to exceed seven per cent. on the principal amount of such debentures; and the board of directors of said Railroad Company, in whose election the debenture holders participate, as provided in said trust deed, are to determine the amount of such net earnings or income so applicable to the payment of interest. 307 308

"The registered holder of this debenture is entitled, at the meetings of the holders of said debentures to be held pursuant to the terms and provisions

of said trust deed, to cast one vote for each one hundred dollars of principal money herein expressed, upon the question of instructing the trustee named in said trust deed, and its successors, how to vote for directors of the Mobile and Ohio Railroad Company; and the holder of this debenture is also entitled to cast a like vote at all other meetings of said debenture holders called pursuant to the terms of the said trust deed, for any purpose for which said debenture holders may properly and lawfully be convened. This debenture is transferable only upon the books of the said The Mobile & Ohio Railroad Company at the City of New York, in person or by attorney, upon the surrender of this certificate, or upon a simultaneous endorsement hereon, and under such regulations as the board of directors of said Railroad Company may from time to time prescribe.

"In witness whereof, the said The Mobile and Ohio Railroad Company has hereunto set its corporate seal, and [L. S.] caused these presents to be attested by its officers thereunto duly authorized, this day of 18 .

President.

Secretary.

Countersigned and registered.

Trustee."

New Securities Not Received in Present Payment.

And whereas it was agreed that the said debentures should be issued to said Hays and Du Puy, as survivors of said Pierson, and disposed of and appropriated by them, pursuant to the terms of

said agreement of October 1st, 1876, without, however, being received in present payment or extinguishment of the claims so assigned to said Hays, Pierson and Du Puy, in whole or in part, but being received by said Hays and Du Puy and disposed of under said agreement only as conditional payment and extinguishment of such claims, and to be final and full payment only upon the conditions above expressed; and it was also agreed by said Railroad Company with said Hays, Pierson and Du Puy that in case any of the property of the said Railroad Company shall be taken or seized in execution or by any creditor for the purpose of sale, or for the purpose of satisfying the claims of such creditor, or in case any person who has failed or omitted or refused to transfer or assign his claims to the said Hays, Pierson and Du Puy, or to the survivors of them or their successors, and who is entitled to the benefit of either of said decrees, shall insist upon and succeed in bringing to execution either of the said decrees; or in case that said Railroad Company shall make default in the payment of the interest on any of the said new bonds, and such interest shall remain in arrear and unpaid for the space of six months; or in case said Railroad Company shall make default in the payment of the principal of any of the said new bonds, then, in any or either of such cases, the said indebtedness, as well that secured by the mortgages and decrees hereinbefore recited as the other indebtedness and claims assigned to said Hays, Pierson and Du Puy, or the survivors of them or their successors, so far as the same shall not previously have been cancelled, satisfied, reduced or extinguished, may, upon an equal footing as to grade and priority of security with the holders of like or corresponding claims, not assigned to the said Hays, Pierson, and Du Puy, or the survivors of them, or their successors,

313

When Received in Final Payment.

314

In case of Refusal to Join Reorganization.

315

In Case of Default.

316

Relative Position of Claims.

317 be immediately enforced in full for the benefit of the holders of the said new bonds and debentures, according to their order and priority as specified in said agreement of October 1, 1876; and

New Mortgage. Whereas, the said Railroad Company has also issued and delivered simultaneously herewith a mortgage to secure the payment of the said new bonds called for and specified in the said agreement of October 1st, 1876; and

Designation of Trustees. Whereas the said Wm. H. Hays and T. Haskins
318 Du Puy have, pursuant to the terms of the agreement of October 1st, 1876, designated the Farmers' Loan and Trust Company, of the City of New York, to be trustee in this trust deed:

Consideration. Now this indenture witnesseth that the said The Mobile and Ohio Railroad Company, in consideration of the premises, and of the sum of one dollar to it in hand paid by the said party of the fourth part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowl-
319 edged, and for the purpose of carrying into effect the said compromises and agreements, as well as for the purpose of securing the payment of the amounts of money expressed in or payable upon the said debentures, and by and with the consent of said parties of the second and third parts testified by their

Conveyance. execution of these presents, Hath granted, bargained and sold, assigned, transferred, conveyed and set over, and by these presents Doth grant, bargain and sell, assign, transfer, convey and set
320 over, unto the said The Farmers' Loan and Trust Company, party of the fourth part to these presents, and its successors in the trusts hereby created, in fee simple, all lands granted to the said The

Description. Mobile and Ohio Railroad Company by any State, or by the United States, not heretofore sold and disposed of by said Railroad Company, as well as all lands belonging to the said The Mobile and Ohio

Railroad Company, and not necessary for the operation of the railroad of said company (not including any branch line now or heretofore owned by said Railroad Company), and also so much of the net income of said Railroad Company as shall remain after payment of current expenses, cost of maintenance, improvements, repairs and interest on the new first mortgage bonds of the said The Mobile & Ohio Railroad Company, bearing date the first day of May, 1879, and on the said debentures, as hereinafter more particularly specified. TO HAVE AND TO HOLD the same, and the appurtenances, to the said party of the fourth part to these presents, and its successors in the said trusts, to, for and upon the uses, trusts and purposes hereinafter declared of and concerning the same, that is to say: in trust for the purpose of securing the performance of the conditions of said agreement of October 1, 1876, and the performance of the covenants therein contained for the benefit and security of the holders of the said debentures, and for the purpose of securing the payment of such sums of money as are expressed in or shall become payable upon the said debentures. And it is hereby agreed that there shall be, and there is hereby created, pursuant to the terms of said agreement of October 1, 1876, a sinking fund for the benefit of the holders of the said debentures, that is to say, the said party of the fourth part and its successors in the said trusts are hereby authorized from time to time to sell and convey the lands and premises hereby granted and conveyed, and good and sufficient deeds therefor in fee simple to execute and deliver, and to receive the proceeds of such sales; and said party of the fourth part, and its successors in said trust, shall deposit the proceeds of the sales of said lands in the Bank of the State of New York, in the City of New York, or such other depository as the party of the fourth

Lands. 321

Income.

Habendum. 322

Trust.

323

Sinking Fund.

Power to Sell Land. 324

part or its successors in said trust may select in the City of New York, each six months; and whenever and in case that the sums so deposited shall amount in the aggregate to ten thousand dollars or more, they shall advertise in the Cities of Mobile and New York, stating the amounts so deposited at the disposal of the sinking fund, and asking for tenders of the debentures of the first series herein mentioned then outstanding, awarding the amount so deposited to the holders of the debentures tendered at the lowest prices. In default of any bids or tenders of such debentures, the trustees shall thereupon draw by lot a sufficient number of the debentures of the first series then outstanding to absorb such deposits, and shall apply the proceeds to the purchase of the debentures so drawn by lot, at par; and after purchase of such debentures of the first series, the proceeds of the sales of said lands, and the interest received on the debentures already purchased and received by said trustees, shall be applied in like manner, and by the same means, to the purchase of each of the said series of debentures in succession. All debentures purchased by said party of the fourth part, and its successors in the said trusts under this instrument shall be transferred to the name of the trustee, and shall be stamped "*Not negotiable*," and shall not be reissued. And the said sinking fund is to consist of the proceeds of said lands, and of interest upon the debentures so purchased by said party of the fourth part, and its successors in said trust, until all the debentures shall have been bought, satisfied or extinguished; and there shall also be paid into the said sinking fund by the said The Mobile and Ohio Railroad Company, a further amount equal to the amount of each dividend which may be hereafter declared upon the capital stock now existing or which may hereafter be created by said Railroad Company, which

Investment of Sinking Fund.

Composition of Sinking Fund.

dividend shall not be declared or paid except an amount equal thereto is also paid in at the same time out of the net revenue into the sinking fund. 329

And it is also agreed by the said The Mobile and Ohio Railroad Company that on the first day of each December following the date of this indenture, until said debenture shall be fully paid and satisfied, the said The Mobile and Ohio Railroad Company shall and will ascertain as closely as practicable the net earnings of such company remaining after paying the expenses of the administration of its affairs, the 330 cost of maintenance, operation, management and proper repair to the property, all taxes and assessments, and the interest on the new first mortgage bonds of said Railroad Company (issued under and pursuant to said agreement of October 1st, 1876) up Net Earnings. to the first day of July then next preceding, and such additions and improvements as may be deemed by the said Railroad Company necessary for the maintenance of its business ; and in case there shall remain in cash any of such net earnings for the year 331 ending on the first day of July then next preceding, and if it shall then be ascertained that up to the first day of July then next preceding that first day of December the said net earnings, after making provision for the expenses, interest and other outgoes aforesaid, as hereinabove provided, leave any sum applicable to the payment of interest on such debentures, then such net earnings shall be applied to the payment of interest on said first series of debentures, not exceeding seven per cent. in lawful 332 money of the United States, and such application Appropriation of Net Earnings. and payment shall be made on or before the first day of February in the next succeeding year ; and after payment of interest at the rate of seven per cent. per annum on said debentures of the first To First Debenture. series, what remains of the said net earnings shall be applied to the payment of interest on the said

333 To Second Debenture. debentures of the second series, at a rate not exceeding seven per cent. per annum; and, after the payment of interest at that rate on the said debentures of the second series, what remains of said net earnings shall be applied to the payment of interest at a rate not exceeding seven per cent. per annum

To Third Debenture. on the debentures of the third series; and what then remains of said net earnings shall be applied to the payment of interest, at a rate not exceeding seven per cent. per annum, on said debentures of the

334 fourth series; and in case the said net earnings for

To Fourth Debenture. any one year shall not be adequate to the payment of seven per cent. on all or either series of such debentures, then the deficiency shall not be a claim upon any earnings of any succeeding year, but shall be absolutely waived and relinquished, and the net earnings shall only be applicable to the payment of

Interest on Debentures non-cumulative. interest on either series of debentures in case such earnings shall amount to one per cent. or a multiple of one per cent. on the total amount of debentures

335 belonging to such series, so that fraction of earnings exceeding such one per cent. or multiple of one per cent. need not be included in the payment of interest for that year, but shall be carried to the credit of the earnings for the succeedinng year; and it is hereby expressly provided, declared and agreed, that the determination by the Board of Directors of said party of the first part of what constitutes net earnings and of what is the amount of net earnings

Method of Determining Net Earnings. distributable as hereinabove provided, shall be con-

336 clusive upon the holders of such debentures respectively.

And whereas the said Hays and Du Puy, as holders of a number of shares of the capital stock of the said Railroad Company, have, by an instrument

Power to Trustees to Vote on Stock. bearing even date herewith, made for the further security of the holders of said debentures, conveyed to and vested in the said party of the fourth part,

and its successors in the said trust, power and authority, irrevocable while any of said debentures remain outstanding, to represent and vote upon said shares of stock at all meetings of the stockholders of said Railroad Company for the election of directors, or for any other purpose for which said stockholders may be lawfully convened. 337

Now, therefore, it is hereby provided that it shall be the duty of the said party of the first part, and it hereby agrees, to keep regular Debenture Account-books, such as Debenture Transfer-books and Ledgers, showing at all times, and from time to time, who are the holders of said debentures; and said party of the first part shall call an annual meeting of the holders of said debentures in each year, at such convenient place in the city of New York as shall be designated by the said party of the first part, by at least three weeks' public notice to be published in one or more newspapers published in the city of New York; such notice to be published twice a week during the said period of three weeks, and the date designated for such meeting shall be not less than ten days preceding the annual meeting of the stockholders of said Railroad Company, and at such meetings each debenture holder shall be entitled to vote, in person or by proxy, for each one hundred dollars of principal money expressed in the debenture or debentures held by him. And the said party of the fourth part, and its successors, as holders of said power and authority, may prescribe reasonable regulations, conforming as nearly as may be to the regulations in force at the meetings of the stockholders of said Railroad Company, for the organization of said meetings, and for the preservation of order at such meetings, and for counting the votes cast at such meetings and determining the result thereof; and the said party of the fourth part, and its successors in the said trust, as holders of said

Covenants.

Debenture Transfer Book. 338

Annual Meeting of Debenture Holders. 339

Debentures Entitled to Vote.

340

Power to Regulate Meetings of Debenture Holders.

power and authority, may and shall vote, in person or by proxy, at stockholders' meetings of said Railroad Company, as instructed and directed by a majority of the votes cast at such annual meeting of said debenture holders; and for the purpose of identifying and registering the names of the debenture holders entitled to vote at said meetings, the transfer-books for such debentures may and shall be closed at the same time and for the same period at and for which the stock transfer-books of said Railroad Company shall be, pursuant to its by-laws, closed, so that no transfer of any of said debentures nor of any of said stock shall be permitted within a period of not less than twenty days next preceding any meeting of said stockholders.

Regulating Transfers of Debentures.

And it is further covenanted, declared, granted and agreed by the said The Mobile and Ohio Railroad Company that this trust deed, and the amount of principal and interest payable upon said debentures, shall and do constitute and create a lien upon the property of said Railroad Company, mortgaged by said new mortgage, subject to the lien of the decrees above recited, and subject to the new mortgage now simultaneously executed by said Railroad Company, to such an extent that in case of a foreclosure of said new mortgage and a sale thereunder, or in case of a sale of any part of the property of said Railroad Company under any incumbrance having priority to this trust deed, the said party of the fourth part, and its successors in said trust, for the benefit of said debentures, according to their order and priority, shall be entitled to the surplus cash proceeds of such sale next after payment of the amount due on such prior incumbrances, to the amount of the aggregate principal sum due on such debentures, and so that in case any lien (other than for the purchase-money or equipment of property hereafter acquired) upon any of the prop-

Description of Lien.

Disposition of Proceeds in Case of Sale.

erty of said Railroad Company, or any part thereof, 345
shall arise, subsequent to the making of this trust deed, by the act or sufferance of said Railroad Company, and such subsequent lien shall be enforced to the extent of depriving said Railroad Company of the possession of any such property or any part thereof, then the said party of the fourth part and its successors in the said trust may enter into Authority to take Possession and Sell.
possession of such part of said property and sell the same, clear of all subsequent liens, for the benefit of holders of said debentures according to their 346
order and priority, or may exact redemption and payment in full of the principal amount of such debentures, before surrendering such property to subsequent lienors; and the said party of the second part does hereby covenant, promise and agree, to and with the parties of the first, third and fourth parts, and each of them, that when and so soon as he shall be duly authorized so to do, he will deliver the property of the said Railroad Company in his keeping, custody or charge as far as herein- Agreement to Surrender Possession. 347
before described and conveyed, to the said party of the fourth part, subject to the liens, trusts and covenants herein expressed and hereby created. And the said party of the fourth part, at the request of the said party of the first part, may, by instruments in writing executed under its corporate seal, and duly attested, from time to time designate two suitable persons to act as attorneys for the said party of the fourth part, in its name, or lawfully otherwise, for the purpose of executing and de- 348
livering such deeds of conveyance, releases and other muniments of title as it shall from time to time be necessary to execute and deliver in order to dispose of any of said lands or for the purpose of perfecting title thereto, and such appointment or Power to Sell Lands.
appointments may also be from time to time revoked by the said party of the fourth part to these

349 presents, and its succesors in the said trust, in its and their discretion, and the said party of the fourth part may also employ such agents and servants as shall be necessary to the efficient performance and discharge of the duties and trusts herein expressed and hereby created, and shall be entitled to indemnity out of the said sinking fund for all expenses necessarily incurred by it in the execution of its said trust and in the discharge of the said duties.

350 And it is also further mutually agreed that in the discharge of the said duties imposed by this trust deed the said party of the fourth part and its successors shall not be charged with any liability by reason of any act done in good faith in the exercise of reasonable diligence, judgment and discretion.

Limitation of Liability.

In witness whereof, the said parties of the first and fourth parts have hereunto set their respective corporate seals and caused these presents to be attested by their respec.ive officers thereunto duly authorized, and the said parties of the second and third parts have hereunto set their hands and seal the day and year first above written.

Attestation.

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THE MOBILE AND OHIO RAILROAD COMPANY, by

[SEAL.] (Sgd.) A. L. RIVES,
Vice-President.

Attest: (Sgd.) A. L. WILLOUGHBY,
Secretary.

352 (Sgd.) W. BUTLER DUNCAN, [L. S.]
Surviving Trustee.

(Sgd.) W. H. HAYS. [L S.]

(Sgd.) T. HASKINS DUPUY. [L. S.]

THE FARMERS' LOAN AND TRUST

[SEAL.] COMPANY,

(Sgd.) by R. G. ROLSTON,
President.

Attest: GEO. P. FITCH.
Secretary.

STATE OF NEW YORK } ss: 353
City and County of New York. }

I, CHARLES NETTLETON, Commissioner of Deeds, of each of the States of Alabama and Mississippi, in New York, residing in said City of New York, do certify that William H. Hays and T. Haskins Du Puy, and also William Butler Duncan, Receiver, &c., whose names are respectively signed to the foregoing instrument, and who are each known to me, personally appeared before me and acknowledged before me on this day that, being informed of the 354
contents of said instrument, they respectively executed the same voluntarily on the day the same bears date, and that they had signed, sealed and delivered the foregoing instrument on the day and year therein named as their voluntary act and deed, each respectively.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 22d day of May, 1879. 355

[SEAL.] (Sgd.) CHARLES NETTLETON,
Commissioner for Alabama in New York,
117 Broadway, New York City.
(Sgd.) CHARLES NETTLETON, [SEAL.]
Commissioner for Mississippi in New York.

STATE OF NEW YORK, } ss.:
City and County of New York, }

I, CHARLES NETTLETON, a Commissioner of each of the States of Kentucky and Tennessee for New 356
York, residing in said City of New York, do certify that the foregoing instrument from the Mobile & Ohio Railroad Company to the Farmers' Loan & Trust Company, by and with the consent of William H. Hays and T. Haskins Du Puy, and by and with the consent of William Butler Duncan, Receiver, &c., was this day produced to me by the said Wil-

357 liam H. Hays, T. Haskins Du Puy and William Butler Duncan, Receiver, and acknowledged by the said William H. Hays, T. Haskins Du Puy and William Butler Duncan, Receiver, respectively, with whom I am personally acquainted, to be their act and deed, and they each acknowledged that they respectively executed the same for the uses and purposes therein contained.

In witness whereof, I have hereunto set
358 [L. S.] my hand and affixed my official seal, this 22d day of May, 1879.

[SEAL.] (sgd.) CHARLES NETTLETON,
Commissioner for Kentucky in New York.
117 Broadway, N. Y.

[SEAL.] (sgd.) CHARLES NETTLETON,
Commissioner for Tennessee in New York.

State, City and County of New York, ss.:

359 Be it remembered, that on this 22d day of May, A. D. 1879, before me, Charles Nettleton, a Commissioner of Deeds of each of the States of Alabama and Mississippi for the State of New York, residing in said City of New York, personally appeared Rosewell G. Rolston, the President of The Farmers' Loan and Trust Company, to me personally known to be such, who being by me duly sworn did depose and say that he resided in the City and State of New York; that he was the President of the said
360 Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order as the President of said The Farmers' Loan and Trust Company. And the said Rosewell G. Rolston, being personally known to me

to be the individual within described, acknowledged 361
to me that he had executed the foregoing instrument as the free act and deed of the said Farmers' Loan and Trust Company, freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal this 22d day of May, A. D. 1879.

[SEAL.] (sgd) CHARLES NETTLETON, 362
Commissioner for Alabama in New York.
117 Broadway, N. Y. City.

[SEAL.] (sgd) CHARLES NETTLETON,
Commissioner for Mississippi in New York.

State, City and County of New York, ss.:

Be it remembered, that on this 22d day of May, A. D. 1879, before me, Charles Nettleton, a Commissioner of Deeds of each of the States of Kentucky and Tennessee for the State of New York, residing in said City of New York, personally appeared Rosewell G. Rolston, the President of the Farmers' Loan and Trust Company, to me personally known to be such, who being by me duly sworn did depose and say that he resided in the City and State of New York; that he was the President of the said Company; that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; 364
that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order as the President of said The Farmers' Loan and Trust Company. And the said Rosewell G. Rolston, the President aforementioned, with whom I am personally acquainted, acknowledged to me that he had exe-

365 cuted the foregoing instrument as the act and deed of said The Farmers' Loan and Trust Company, for the purposes therein contained.

In witness whereof, I have hereunto set my hand and affixed my official seal this 22d day of May, A. D. 1879.

[SEAL.] (sgd) CHARLES NETTLETON,
117 Broadway, N. Y. City.
366 *Commissioner for Kentucky in New York,*

[SEAL.] (sgd) CHARLES NETTLETON,
Commissioner for Tennessee in New York.

STATE OF ALABAMA, }
County of Mobile. }

Be it remembered, that on this 7th day of June, A. D. 1879, before me, Samuel C. Muldon, a Notary Public, in and for the Port of Mobile and
367 County of Mobile and State of Alabama, residing in the Port of Mobile, and as Commissioner for the State of Mississippi to take the acknowledgments of deeds, &c., personally appeared A. L. Rives, Vice-President of the Mobile and Ohio Railroad Company, to me personally known to be such, who being by me duly sworn did depose and say that he resides in the Port of Mobile; that he is the Vice President of the Mobile and Ohio Railroad Company; that he knows the corporate seal
368 of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said company, and that he signed his name thereto by the like order as the Vice President of the said The Mobile and Ohio Railroad Company; and the said A. L. Rives, being personally known to me to be the individual described, acknowledged

to me that he had executed the foregoing instrument as the free act and deed of the said The Mobile and Ohio Railroad Company, freely and voluntarily for the uses and purposes therein mentioned. 369

In witness whereof, I hereunto set my hand as Notary Public in and for the County of Mobile, State of Alabama, and set my hand and official seal as Commissioner for the State of Mississippi, this 7th day of June, A. D. 1879. 380

[SEAL.] (sgd) SAML. C. MULDON,
Notary Public,
Mobile Co.

[SEAL.] (sgd) SAML. C. MULDON,
A Commissioner for Mississippi in Alabama.

STATE OF ALABAMA, }
Mobile County. } 371

Be it remembered, that on this 7th day of June, A. D. 1879, before me, Saml. C. Muldon, Commissioner of Deeds of each of the States of Tennessee and Kentucky residing in the Port of Mobile, personally appeared A. L. Rives, Vice-President of the Mobile and Ohio Railroad Company, to me personally known to be such, who being by me duly sworn, did depose and say that he resides in the Port of Mobile: that he is the Vice-President of the said company; that he knows the corporate 372 seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the Board of Directors of said company, and that he signed his name thereto by the like order as the Vice President of the said The Mobile and Ohio Railroad Company. And the said A. L. Rives before men-

373 tioned, with whom I am personally acquainted acknowledged to me that he had executed the foregoing instrument as the free act and deed of the said The Mobile and Ohio Railroad Company, freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, I hereunto set my hand and affix my official seals this the 7th day of June, A. D. 1879.

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[SEAL.] (sgd) SAML. C. MULDON,
A Commissioner for Tennessee in Alabama.

[SEAL.] (sgd) SAML. C. MULDON,
A Commissioner for Kentucky in Alabama.

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ASSIGNMENT OF SECURITIES

BY THE

COMMITTEE OF REORGANIZATION

TO THE

FARMERS' LOAN & TRUST CO., TRUSTEES.

Dated March 1, 1879.

THIS INDENTURE, Made this first day of May, 1879, by and between William H. Hays and T. Haskins Du Puy (survivors of William S. Pierson, deceased) as the agent, assignees and attorneys of creditors of The Mobile and Ohio Railroad Company, and as a "Committee of Reorganization," under the agreement and transfer of October 1st, 1876, hereinafter mentioned, parties of the first part, The Mobile and Ohio Railroad Company, a body politic and corporate, duly created and existing under and by virtue of the laws of the States of Alabama, Mississippi, Tennessee and Kentucky, party of the second part, and the Farmers' Loan and Trust Company, a body politic and corporate, duly created and existing under and by virtue of the laws of the State of New York, and authorized to execute the trusts hereby created and herein expressed, party of the third part.

Whereas, the said The Mobile and Ohio Railroad Company was, by an Act of the Legislature of the State of Alabama, approved the third day of February, 1848, created a body politic and corporate, and by that name was, among other things, vested with all the powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of said Act; and

Whereas, said Act was amended by an Act passed

by the Legislature of the State of Alabama on the 5th day of January, 1850; and

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Mississippi, approved February 17th, 1848, which Act was amended on the 4th of March, 1850, granted within the State of Mississippi the same rights, powers and privileges as had been and are granted within the State of Alabama by the Legislature of the State of Alabama to the said Railroad Company, with certain exemptions which appear in said Act of the Legislature of the State of Mississippi, and the amendments thereto; and

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Tennessee, approved February 28th, 1848, created a body politic and corporate within the State of Tennessee, with the rights, powers, privileges and immunities in said Act specified; and

Whereas, the said Railroad Company was, by an Act of the Legislature of the State of Kentucky, approved February 26th, 1848, granted within the State of Kentucky all the privileges, rights and immunities granted and belonging to the said Railroad Company within the State of Alabama; and

Whereas, the said Railroad Company, on or about the first day of November, 1853, in and by a certain indenture of mortgage or deed of trust duly executed by it under its corporate seal, bearing date on that day, granted and conveyed the property therein described to Morris Ketchum, John J. Palmer, and William R. Hallett, as trustees, for the purpose of securing the payment of an issue of bonds in said mortgage or deed of trust described; and

Whereas, a large number of the bonds in and by the said mortgage or deed of trust described and secured, were afterwards issued by said Railroad

Company and put in circulation, with coupons for 385
interest payable semi-annually thereto attached;
and

Whereas the said Railroad Company, on or about the fifteenth day of February, 1860, by a certain indenture of mortgage or trust deed known as the second mortgage, bearing date on that day, duly executed by said Company under its corporate seal, granted and conveyed the property therein described, to Robert A. Baker, George H. Young and Samuel Williams, as trustees, for the purpose of 386
securing the payment of the particular issue of bonds therein described: and

Whereas, a large number of the bonds in said mortgage of 1860 described and provided for, were afterwards issued and put in circulation by said Railroad Company; and

Whereas, the said Railroad Company, on or about the first day of July, 1871, in and by a certain other indenture of mortgage or trust deed, bearing date on that day, granted and conveyed the property 387
therein described (the same being situate within the limits of the State of Tennessee), to William Butler Duncan, Adrian Iselin and Richard T. Wilson, as trustees, for the purpose of recognizing and declaring the lien, and securing the payment of the issue of bonds in said mortgage or deed of trust of July 1st, 1871, mentioned; and

Whereas, said bond in said mortgage of July 1st, 1871, described and provided for were afterwards issued and put in circulation; and 388

Whereas, the said Railroad Company, on or about the first day of January, 1874, in and by a certain other indenture of mortgage or deed of trust, bearing date on that day, granted and conveyed the property therein described to William Butler Duncan and Samuel L. M. Barlow, as trustees, for the purpose of securing the payment of the several issues

of bonds in said mortgage or deed of trust of January 1st, 1874, described; and

Whereas, W. Butler Duncan and A. Foster Elliott became duly substituted in the place and stead of Morris Ketchum, Jno. J. Palmer and W. R. Hallett, as trustees, of the mortgage first herein above described or referred to; and

Whereas, on or about the 8th day of May, 1875, the said W. Butler Duncan and A. Foster Elliott, as trustees under said mortgage of 1853, took possession of the mortgaged property therein described, and afterwards commenced suits in the Circuit Court of the United States for the Southern District of Alabama and in other courts for the foreclosure of said mortgage of 1853, and for the sale of the mortgaged property; and

Whereas, on the 14th day of March, 1876, another suit was brought in the said first-mentioned court by said Morris Ketchum, claiming to be trustee under said first mortgage, to foreclose the same, and for the sale of the mortgaged property; and

Whereas, on the 2d day of April, 1877, another suit was brought in the same court by D'Oreli Ziegler and others, claiming to be the holders of mortgage bonds issued under and secured by said mortgage of 1853, to foreclose said mortgage of 1853, and for the sale of the mortgaged property; and

Whereas, said several suits were by an order of the said Circuit Court of the United States for the Southern District of Alabama, made on the 6th day of June, 1877, consolidated, and pursuant to said order the said suits, as so consolidated, proceeded to a decree which was rendered by said Circuit Court of the United States for the Southern District of Alabama on the 15th day of June, 1877, which said decree was afterwards on or about the 30th day of May, 1878, affirmed by the Supreme Court of the United States; and

Whereas, on or about the 27th day of May, 393
1875, a suit was brought by W. Butler Duncan, Adrian Iselin and Richard T. Wilson, in the Circuit Court of the United States for the Western District of Tennessee, for the purpose of enforcing the lien declared in and recognized by the said mortgage of 1871, and for the sale of the mortgaged property therein described; and

Whereas, said last-mentioned suit proceeded to final decrees, which were rendered by said Circuit Court of the United States for the Western District 394
of Tennessee, on the 20th day of May, 1876, and on the 12th day of November, 1877; and

Whereas, nearly all the holders of the outstanding bonds secured by the said several mortgages or deeds of trust, and by the said decrees of the said Courts, as well as nearly all the holders of other evidences of debt issued by the said Railroad Company, and of other claims outstanding against said Railroad Company, did in and by and pursuant to an agreement and transfer, bearing date October 1st, 395
1876, assign and transfer their respective claims and demands, and deliver the possession thereof, to said William H. Hays, William S. Pierson and T. Haskins Du Puy, of whom the said Hayes and Du Puy are the survivors, to which agreement and transfer of October 1st, 1876, reference is hereby made, as if the same were herein recited; and

Whereas it was agreed between the said Hays, Pierson and Du Puy, and the said Railroad Company, that the said Railroad Company should issue 396
and deliver to said Hays, Pierson and Du Puy, and their survivors or successors, new bonds and debentures, in which should be expressed the sums of principal money and interest which, upon the conditions and contingencies herein expressed, should be received and taken in full payment and discharge of the claims so as aforesaid assigned to

said Hayes, Pierson and Du Puy, but which, in the meantime, before the happening of such contingencies, are to be considered as evidence of the sums payable by said Railroad Company, in order finally to obtain the full benefit of the agreements of compromise, extension and forbearance herein mentioned, and of the time at which, and the conditions upon which, such sums are to become payable; and

Whereas the said William H. Hayes, William S. Pierson and T. Haskins Du Puy, by virtue of the authority conferred upon them by said agreement and transfer of October 1st, 1876, agreed upon a compromise, extension and forbearance of the said claims so transferred to and held by them as aforesaid, and so have agreed to accept said new bonds and debentures upon the conditions herein expressed, the terms of which compromise, extension and forbearance are as follows, namely: (1) that so far as said Railroad Company shall pay or cause to be paid the principal sums expressed in the bonds or debentures provided for by said agreement of October 1st, 1876, or the interest accruing thereon, pursuant to the terms of said bonds and the coupons thereto attached, and pursuant to the terms of the said debentures, such payments shall, in any event, be applied in extinguishment and discharge of an equal amount of the said indebtedness as aforesaid assigned to said Hayes, Pierson and Du Puy; (2) that in case all lawful claims against said Railroad Company which have arisen prior to the date of this instrument, and which have not yet been assigned to said Hays, Pierson and Du Puy, shall be assigned and transferred to said Hays and Du Puy, or their successors, or to the said The Farmers' Loan and Trust Company, under and pursuant to said agreement of October 1st, 1876, or in any manner satisfied, cancelled or extinguished by said Railroad Company, or out of its property or income, or

otherwise, then all the claims so assigned and transferred shall thenceforth be deemed to have been paid and satisfied by the new bonds and debentures herein mentioned, and such assigned claims shall be, then and in that case, for all purposes and intents, cancelled and extinguished, and the said Railroad Company released therefrom; (3) that the said Hays and Du Puy, and their successors, and The Farmers' Loan and Trust Company shall not nor shall either of them enforce or put in execution against said Railroad Company either of the said decrees, nor any of said assigned claims, so long as payment of the interest and principal mentioned in said new bonds, coupons and debentures, respectively, shall be made as aforesaid, unless the property of said Railroad Company, or some portion thereof, shall be exposed for sale, attached, seized, sequestrated or taken for the purpose of being applied towards satisfying some claim secured by some one of said decrees and not assigned pursuant to said agreement of October 1st, 1876, or some claim against said Railroad Company which has not been so assigned or transferred, and which has arisen prior to the date of this instrument, but (4) that upon default in the payment of said last-mentioned interest or principal, or upon the property of said Railroad Company, or any part thereof, being exposed for sale, attached, seized, sequestrated or taken for the purpose of being applied towards satisfying any claim secured by any one of said decrees, and not assigned pursuant to said agreement of October 1st, 1876, or any claim against said Railroad Company which has not been so assigned or transferred, and which has arisen prior to the date of this instrument, then said Hays and Du Puy, and their successors and assigns, holders of said claims so assigned may enforce said assigned claims and said decrees (so far as the same remain unsatisfied) for

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the benefit of the holders of the said new bonds and debentures, as if such holders of said new bonds and debentures were still entitled respectively to the proceeds of said assigned claims to the same extent as when the same were respectively assigned, except so far as such claims shall have been in fact paid under the operation of said agreements; (5) that until said claims so assigned shall be satisfied in manner aforesaid and pursuant to the terms aforesaid, the several and respective holders of the new bonds and debentures provided to be issued as aforesaid, shall be beneficially interested in said assigned claims and the proceeds thereof, and the amounts of money or property collectible or realizable thereon or purchaseable or purchased therewith, in the same proportions and according to the same order and priority in which they are, or may be, from time to time, interested in said new bonds and debentures; (6) that after satisfaction of the said new bonds so to be issued in case the same shall be satisfied by means of a sale, the remaining proceeds of said sale shall be appropriated to the use and benefit of the holders of said debentures, according to the order and priority of such debentures, as fixed by said agreement of Oct. 1, 1876; (7) that in case said decrees, or either of them, shall be enforced, and a sale shall be made of any of the property covered thereby, the said assigned claims shall and may, so far as they may remain unsatisfied, be used and appropriated according to the terms and provisions of said decrees respectively in the purchase of the property so brought to sale, and that thereupon the title so acquired by such use and appropriation of such assigned claims shall become and be subject to the lien of this mortgage and the bonds secured thereby, and also to the lien, operation, and effect of the deeds of trust made simultaneously herewith for the benefit of the

holders of preferred income and sinking fund de- 409
bentures; and

Whereas said new bonds are now about to be issued accordingly, and are to be substantially in the following form:

(Form of Bond.)

"The Mobile & Ohio Railroad Company acknowledges itself to be indebted to the bearer, or to the registered holder hereof, for value received, in 410
the sum of one thousand dollars in gold coin of the United States of the present standard of weight and fineness, and hereby promises to pay such sum to the bearer hereof, or to the registered holder hereof, at its agency in the City of New York, on the first day of December, A. D. 1927, and also meanwhile to pay the interest thereon at the rate of six per cent. per annum, as expressed in the coupons herewith issued, on the first days of June and December respectively in each year, on the presentation 411
of the said coupons as they severally become due.

"This bond is issued under and in pursuance of certain agreements for the compromise, extension and forbearance of the original indebtedness of the said The Mobile & Ohio Railroad Company, and is not received by the holder in payment or extinguishment of such original indebtedness in whole or in part, except as provided for in and by the agreements and mortgage herein referred to; and it is one
of an issue amounting in the aggregate to seven mil- 412
lions of dollars principal money, and is entitled to the benefit and security of certain degrees establishing and adjusting such original indebtedness until such decrees shall be satisfied, cancelled or extinguished, as well as to the benefit of a mortgage made by the said The Mobile and Ohio Railroad Company to the Farmers' Loan and Trust Company, as Trustees,

413 bearing even date herewith, and to the benefit of the covenants and conditions in said agreements, decrees, and mortgage contained, and is issued subject to the rights given and conferred by said agreements, decrees, and mortgage, to all of which reference is hereby made. And it is agreed that in case payment of any of the coupons issued with this bond shall be refused upon presentation of such coupon as provided therein at or after the maturity of such coupon, and if such non-payment shall con-
414 tinue for the space of six months after such presentation, then and in that case the principal sum secured by this bond shall become and be immediately due and payable, anything herein contained to the contrary notwithstanding.

"The holder of this bond may, from time to time, have the same registered on the books of said Railroad Company, on payment of such fee therefor and under such regulations as the Company may establish, such registry being noted on the bond itself by
415 the Company's transfer agent, after which no transfer shall be valid unless made on said books by the registered holder, in person or by attorney duly authorized, and simultaneously noted on the bond, but the same may be discharged from registry by being in like manner transferred to bearer, after which it shall be transferable by delivery. The registry of the bond as above shall not restrain the negotiability of the coupons by delivery, but the coupons may be surrendered and interest on the bond will
416 thereafter be payable only to the registered holder of the bond.

"This bond shall not be entitled to the benefit of the security provided as above, nor operate against said Company as an evidence of debt or otherwise until there shall be endorsed hereon a certificate signed by the Farmers' Loan and Trust Company or its successors, identifying the same as being one of

the bonds issued under the said mortgage of seven 417
millions of dollars.

"In testimony whereof, the said The Mobile and Ohio Railroad Company has hereunto set its corporate seal and caused these presents to be attested by its President and Secretary, the day of 1879.

President."

Secretary." 418

(FORM OF COUPON):

"The Mobile & Ohio Railroad Co. will pay bearer, in any lawful money of the United States, the sum of thirty dollars, on the day of , 18 , at the agency of the said Company, in the City of New York, or at Mobile, at the option of the holder hereof, being interest on mortgage bond, No.

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Treasurer."

And whereas, said debentures are to be in substantially the following form:

(*Form of Preferred Income and Sinking Fund Debentures.*)

This is to certify that is entitled to the sum of dollars out of the Sinking Fund created by the Mobile and 420
Ohio Railroad Company for the benefit of the holders of the several series of preferred income and sinking fund debentures issued by it, which sinking fund is created by and described in the deed of trust made by the said Railroad Company to the Farmers' Loan and Trust Company, bearing date the first day of May, 1879. The said sinking fund consists of the

proceeds of the lands described in the said trust deed, and of the surplus income so far as directed by said deed of trust, which proceeds and surplus income are to be applied to the purchase of the said perferred income and sinking fund debentures in the order of their priority and in the manner directed by the said deed of trust.

"This debenture is issued pursuant to the terms of certain agreements heretofore made by the said Railroad Company for the compromise, extension and forbearance of its former indebtedness, and it does not bear interest at any fixed annual rate; but whenever it shall be ascertained that the net earnings or income of any one year amount to one per cent. or a multiple of one per cent. upon the principal amount of debentures embraced in any one series of debentures, after providing for prior charges on the gross earnings, such net earnings or income for that year are to be applied, pursuant to the terms of said trust deed, to the payment of interest on such series of debentures, no one payment of interest to exceed seven per cent. on the principal amount of such debentures; and the board of directors of said Railroad Company, in whose election the debenture holders participate, as provided in said trust deed, are to determine the amount of such net earnings or income so applicable to the payment of interest.

"The registered holder of this debenture is entitled, at the meetings of the holders of said debentures to be held pursuant to the terms and provisions of said trust deed, to cast one vote for each one hundred dollars of principal money herein expressed, upon the question of instructing the trustee named in said trust deed, and its successors, how to vote for directors of the Mobile and Ohio Railroad Company; and the holder of this debenture is also entitled to cast a like vote at all other meetings of

said debenture holders called pursuant to the terms of the said trust deed, for any purpose for which said debenture holders may properly and lawfully be convened. This debenture is transferable only upon the books of the said The Mobile & Ohio Railroad Company at the City of New York, in person or by attorney, only upon the surrender of this certificate, and under such regulations as the board of directors of said Railroad Company may from time to time prescribe. 425

"In witness whereof, the said The Mobile and Ohio Railroad Company has hereunto set its corporate seal, and caused these presents to be attested by its officers thereunto duly authorized, this day of 18 . 426

[L. S.]

President.

Secretary. 427

Countersigned and registered.

Trustee."

And whereas it was agreed that the said new bonds and debentures should be issued to said Hays and Du Puy, as survivors of said Pierson, and disposed of and appropriated by them, pursuant to the terms of said agreement of October 1st, 1876, without, however, being received in present payment or extinguishment of the claims so assigned to said Hays, Pierson and Du Puy, in whole or in part, but being received by said Hays and Du Puy and disposed of under said agreement only as conditional payment and extinguishment of such claims, and to be final and full payment only upon the conditions above expressed; and it was also agreed by said Railroad 428

proceeds of the lands described in the said trust deed, and of the surplus income so far as directed by said deed of trust, which proceeds and surplus income are to be applied to the purchase of the said perferred income and sinking fund debentures in the order of their priority and in the manner directed by the said deed of trust.

"This debenture is issued pursuant to the terms of certain agreements heretofore made by the said Railroad Company for the compromise, extension and forbearance of its former indebtedness, and it does not bear interest at any fixed annual rate; but whenever it shall be ascertained that the net earnings or income of any one year amount to one per cent. or a multiple of one per cent. upon the principal amount of debentures embraced in any one series of debentures, after providing for prior charges on the gross earnings, such net earnings or income for that year are to be applied, pursuant to the terms of said trust deed, to the payment of interest on such series of debentures, no one payment of interest to exceed seven per cent. on the principal amount of such debentures; and the board of directors of said Railroad Company, in whose election the debenture holders participate, as provided in said trust deed, are to determine the amount of such net earnings or income so applicable to the payment of interest.

"The registered holder of this debenture is entitled, at the meetings of the holders of said debentures to be held pursuant to the terms and provisions of said trust deed, to cast one vote for each one hundred dollars of principal money herein expressed, upon the question of instructing the trustee named in said trust deed, and its successors, how to vote for directors of the Mobile and Ohio Railroad Company; and the holder of this debenture is also entitled to cast a like vote at all other meetings of

said debenture holders called pursuant to the terms 425
of the said trust deed, for any purpose for which said debenture holders may properly and lawfully be convened. This debenture is transferable only upon the books of the said The Mobile & Ohio Railroad Company at the City of New York, in person or by attorney, only upon the surrender of this certificate, and under such regulations as the board of directors of said Railroad Company may from time to time prescribe.

"In witness whereof, the said The Mobile 426
and Ohio Railroad Company has hereunto set its corporate seal, and
[L. S.] caused these presents to be attested by its officers thereunto duly authorized, this day of 18 .

President.

Secretary. 427

Countersigned and registered.

Trustee."

And whereas it was agreed that the said new bonds and debentures should be issued to said Hays and Du Puy, as survivors of said Pierson, and disposed of and appropriated by them, pursuant to the terms of said agreement of October 1st, 1876, without, however, being received in present payment or extin- 428
guishment of the claims so assigned to said Hays, Pierson and Du Puy, in whole or in part, but being received by said Hays and Du Puy and disposed of under said agreement only as conditional payment and extinguishment of such claims, and to be final and full payment only upon the conditions above expressed; and it was also agreed by said Railroad

Company with said Hays, Pierson and Du Puy that in case any of the property of the said Railroad Company shall be taken or seized in execution or by any creditor for the purpose of sale, or for the purpose of satisfying the claims of such creditor, or in case any person who has failed or omitted or refused to transfer or assign his claims to the said Hays, Pierson and Du Puy, or to the survivors of them or their successors, and who is entitled to the benefit of either of said decrees, shall insist upon and succeed in bringing to execution either of the said decrees; or in case that said Railroad Company shall make default in the payment of the interest on any of the said new bonds, and such interest shall remain in arrear and unpaid for the space of six months; or in case said Railroad Company shall make default in the payment of the principal of any of the said new bonds, then, in any or either of such cases, the said indebtedness, as well that secured by the mortgages and decrees hereinbefore recited as the other indebtedness and claims assigned to said Hays, Pierson and Du Puy, or the survivors of them or their successors, so far as the same shall not previously have been cancelled, satisfied, reduced or extinguished, may, upon an equal footing as to grade and priority of security with the holders of like or corresponding claims, not assigned to the said Hays, Pierson, and Du Puy, or the survivors of them, or their successors, be immediately enforced in full for the benefit of the holders of the said new bonds and debentures, according to their order and priority as specified in said agreement of October 1, 1876; and

Whereas some of the creditors of said Railroad Company whose claims are secured by the mortgages heretofore issued by said Railroad Company, or whose claims are unsecured, have not actually transferred or assigned their bonds or claims to the

said Hays, Pierson and Du Puy, nor to the survivors of them, pursuant to the terms of said agreement and transfer of October 1st, 1876; and 433

Whereas the said William H. Hays and T. Haskins Du Puy, under and pursuant to said agreement of October 1, 1876, intend to retain, out of said bonds and debentures so issued or to be issued, such portions thereof as are required for distribution among the creditors of said Company who became parties to said agreement of October 1, 1876, and such portion thereof as they are authorized to 434 retain and appropriate for the purpose of providing for the expenses incurred under said agreement, and in carrying the same into effect; and

Whereas some others of the bonds secured by the former first and other mortgages of said Company, which appear by the books of the said Company to have been issued, are believed to have been lost or destroyed, or in fact paid, canceled or extinguished, so that no equivalent amount of bonds or debentures will ever be required to be issued to actual 435 holders of said former bonds and claims, under the terms of said agreement of October 1st, 1876; and

Whereas the said William H. Hays and T. Haskins Du Puy, out of the total amount of said bonds and debentures so now freshly issued or about to be issued, desire to set apart a sufficient number to provide for such of said claims against said Railroad Company as have not yet been assigned pursuant to said agreement of October 1, 1876, but may be hereafter proposed to be assigned: 436

Now, this indenture witnesseth: That the said William H. Hays and T. Haskins Du Puy, by and with the consent of the said party of the second part, testified by its execution of these presents, for and in consideration of the premises, and for the purposes hereinafter expressed, have bargained and sold, assigned, transferred and set over, and by

these presents do bargain and sell, assign, transfer and set over unto the said The Farmers' Loan and Trust Company and its successors in the trusts hereby created, all and singular the first and second and other mortgage bonds of The Mobile and Ohio Railroad Company, and all other claims and demands which have been heretofore or may be hereafter assigned and transferred to the said William H. Hays, William S. Pierson and T. Haskins Du Puy, or to the survivors of them or their successors, under or pursuant to said agreement of October 1st, 1876, together with the benefit of the aforesaid decrees of the said Circuit Courts of the United States respectively, and the right, claim and interest of said Hays, Pierson and Du Puy in, to, under or by virtue of said decrees; TO HAVE AND TO HOLD THE SAME subject to the terms of said agreement of October 1st, 1876, and to the terms of the said agreements for compromise, extension, and forbearance hereinabove recited and set forth; with the same rights, powers, interests, privileges and authority in relation to said bonds, claims and decrees which said Hays, Pierson and Du Puy had, or any of them have under said agreements, and pursuant to the terms of said agreement of October 1st, 1876, it being understood and declared that the said original first mortgage bonds of 1853, and other claims hereby assigned to the said The Farmers' Loan and Trust Company, are to be held for the benefit and security of the owners of said new first mortgage bonds and debentures, upon an equal footing with any holders of said original first mortgage bonds who shall not heretofore have assigned and transferred, or shall not hereafter assign and transfer, their demands to the said Hays and Du Puy, or to the said The Farmers' Loan and Trust Company; and that for the purpose of the security of the holders and owners of said new first mortgage bonds and

debentures, the bonds and other claims hereby as- 441
signed are not to be deemed as paid nor reduced in amount, except upon the conditions and contingencies specified in said agreements of compromise, extension and forbearance made by said Hays, Pierson and Du Puy, as hereinabove recited and set forth.

And it is agreed that, in case the said The Mobile & Ohio Railroad Company shall make default in payment of either the principal or interest which shall hereafter mature or become payable upon said 442
new issue of bonds, or in the performance of the obligations expressed in said debentures, and such default in payment of interest on such new bonds shall continue for the space of six months, or in case default in the payment of the principal of any such bonds shall occur, or in case of any of the property of the said The Mobile & Ohio Railroad Company, of any description, shall be taken or seized in execution or under other process for the satisfaction of any debt heretofore incurred or which may here- 443
after be incurred by the said The Mobile & Ohio Railroad Company, then the said decrees of the Circuit Courts of the United States, so far as the same shall not previously have been reduced in amount or satisfied, released, canceled or extinguished, shall be and become capable of immediate enforcement, and they shall likewise be and become to the same extent capable of immediate enforcement for the benefit of the holders of said new issue of bonds and debentures, in case any holders of the 444
old issue of first mortgage bonds, or other bonds of or claims against said railroad company, who have not become parties to said agreement of October 1st, 1876, shall require either of the said decrees to be enforced, and shall succeed in having the same enforced, and that so far as the said The Farmers' Loan & Trust Company, and its successors in said trusts,

shall be the holders of any of said old first or other mortgage bonds or claims hereby assigned, then the said The Farmers' Loan & Trust Company, and its successors in such trusts, as such holders, shall be entitled to the benefit of said decrees and to their proportion of the proceeds of the use, operation and sale of the property described therein, upon an equal footing with the holders of like or corresponding securities described in said decrees, or entitled to the benefit thereof, who shall have not become parties to said agreement of October 1st, 1876; and whatever sums of money or whatever other property The Farmers' Loan & Trust Company, or its successors in such trusts, shall become entitled to upon the enforcement of said decrees or upon the sale of said property, shall be held by it for the equal benefit of the holders of said new issue of bonds of The Mobile & Ohio Railroad Company in the first instance, and then for the benefit of the holders of said debentures according to their order and priority.

And in case of the enforcement of said decrees or either of them, the said The Farmers' Loan & Trust Company may use and appropriate the said securities hereinabove assigned, in the purchase of the mortgaged property described in said decrees, and in that case the title so acquired shall become and be subject to the lien, operation and effect of said mortgage and trust deed of May 1, 1879, pursuant to the agreements hereinabove recited and set forth; and upon acquiring such title by means of such use and appropriation of such assigned securities, the said The Farmers' Loan & Trust Company, and its successors, may and shall, if so requested by the said The Mobile & Ohio Railroad Company, reconvey such purchase property and estate to the said railroad company subject to and upon its assuming and providing for the obligations created by said

new mortgage and trust deed, and the bonds and 449
debentures thereby provided for.

AND THIS INDENTURE FURTHER WITNESSETH, that the said William H. Hays and T. Haskins Du Puy, for and upon the considerations aforesaid, have bargained and sold, assigned, transferred and set over, and by these presents do bargain and sell, assign, transfer and set over, unto the said The Farmers' Loan & Trust Company of the City of New York, mortgage bonds and debentures of the new issue of 450
the Mobile & Ohio Railroad Company, sufficient for the purposes hereinafter stated, after making the reservations above recited, for the following uses, trusts and purposes, that is to say:

IN TRUST to use the same in carrying into effect the provisions of said agreement of October 1st, 1876, by exchanging the same, so far as may be necessary or expedient, or practicable, with the holders of any of the old first mortgage or other bonds or claims against the Mobile & 451
Ohio Railroad Company, who have not yet become parties to said agreements of compromise, forbearance and extension, and who may hereafter desire to become such parties or to accept the terms therein expressed; or in case such exchange cannot be effected, then to sell the said bonds and debentures of the new issue hereby assigned to the said The Farmers' Loan & Trust Company, and to appropriate the proceeds of the sale thereof to taking up, paying or purchasing such old bonds and claims 452
as can be purchased, the holders of which may refuse or omit to become parties to said agreements of compromise, extension and forbearance; or in case The Mobile & Ohio Railroad Company shall take up, or there shall be taken up, paid or provided for out of its funds, income or property, any first mortgage or other bond or claim which shall be held by

persons who shall not have become parties to said agreement of October 1st, 1876, then it shall be the duty of the Farmers' Loan & Trust Company to transfer, assign and deliver to The Mobile & Ohio Railroad Company, for its own use, the same proportionate amount of the new bonds and debentures hereby assigned to it, which the holder of the bond or claim so taken up or paid by said Mobile & Ohio Railroad Company, or out of its funds, income, or property, would have been entitled to under the provisions of said agreement of October 1st, 1876: Provided, however, that said party of the third part and its successors shall not pay to any creditor of said railroad company who does not become, or has not become, a party to said agreement of October 1st, 1876, any larger sum out of the proceeds of sales of said new bonds and debentures hereby assigned than he would be entitled to in case he had become such party to said agreement and had accepted his proportion of said new bonds and debentures, and such proportion, after being so accepted by him, had been converted into money for his account; and in case of a sale of said property or any portion thereof under said decrees or either of them and a reconveyance of such property to the said railroad company, pursuant to this instrument, then such of the new securities hereby assigned as shall not theretofore have been disposed of, for the uses herein directed, shall be transferred and delivered to the said railroad company. And it is agreed that whatever dividends or payments of money shall be, from time to time, made upon the old bonds, securities and claims hereby assigned by the said railroad company or out of its funds, income or property, shall, by the said The Farmers' Loan & Trust Company and its successors, be in the first instance applied, in pursuance of the trusts hereby created, to the payment of the interest coupons or

warrants attached to the new bonds now freshly 457
issued or to be issued by the railroad company as aforesaid (excluding any of such bonds now hereby assigned to the said The Farmers' Loan & Trust Company, so long as the same remain in the hands of the said The Farmers' Loan & Trust Company) in the order of the maturity of such coupons or warrants, and that so far as such money shall not be required for that purpose, the surplus thereof shall be transferred to the sinking fund provided by the trust deed of even date herewith, for the 458
benefit of the holders of the said debentures.

And it is further agreed that in case said decrees, or either of them, shall be enforced or carried into effect or brought to execution by sale, and the said The Farmers' Loan & Trust Company, or its successors in said trust, shall become the purchaser of the property so brought to sale, the said new bonds and debentures hereby assigned may, so far as necessary, be used and appropriated in the purchase of such property, or for the purpose of rais- 459
ing such cash or money or funds as it may be necessary or requisite to raise in order to pay into Court the money required to be paid by the terms of said decrees or on such sale; and that the right and title to said old or new securities hereby created shall not, so long as it subsists in any manner or to any extent, merge in the title created by the said mortgage or trust deed; and that neither the title created by said new mortgage or by said new trust deed shall, so long as they subsist respectively, merge 460
in the title and right created by this instrument; and that in case of a sale of such mortgaged property, or any part thereof, under said decrees or either of them, and in case of the purchase by the said party of the third part or its successors of the property so sold by the use and appropriation of the said old securities hereby assigned, then a proportionate part

of the price bid on such sale shall be considered as applied in reduction of the principal amount due on said old mortgage bonds hereby assigned, and the amount expressed in said new mortgage bonds shall be considered as also applied in like reduction, and the balance then due upon said old mortgage bonds shall be and remain due by the said Railroad Company upon the said old securities, subject to the lien, operation and effect of the said new mortgage trust deed, and a recovery may be had therefor according to law by proceedings in said foreclosure suits heretofore brought as aforesaid, or by such other proceedings as may be necessary and proper, and that so long as any of the said new bonds, debentures and coupons hereby assigned shall remain in the hands of the said party of the third part, or its successors, not exchanged or sold for any of the purposes herein expressed, no demand of payment thereof or thereon shall be made upon the said Railroad Company, and said Railroad Company shall not be obliged to pay the same, nor deemed to be in default or liable to any suit or proceeding by reason of omitting or refusing to pay the same.

In witness whereof, the said parties of the second and third parts have hereunto set their respective corporate seals, and caused these presents to be attested by their respective officers, thereunto duly authorized, and the said parties of the first part have set their hands and seals the day and year first above written.

(Sgd.) W. H. HAYS. [L. S.]

(Sgd.) T. HASKINS DEPUY. [L. S.]

(Sgd.) SAML. C. MULLOY.

[L. S.] THE MOBILE & OHIO RAILROAD COMPANY,

by

(Sgd.) A. L. RIVES, *Vice President.*

Attest: (Sgd.) A. L. WILLOUGHBY, *Secretary.*

[L. S.] THE FARMERS' LOAN & TRUST COMPANY, 465
by
(Sgd.) R. G. ROLSTON, *President.*
Attest: (Sgd.) GEO. P. FITCH.

STATE OF NEW YORK, }
City and County of New York. } ss.:

Be it remembered, that on this 22d day of May, A. D. 1879, before me, Charles Nettleton, a Notary 466
Public of the State of New York, in and for the County of New York, duly commissioned and sworn and dwelling in said City of New York, personally came William H. Hays and T. Haskins DuPuy, to me personally known to be the same persons described in and who executed the foregoing instrument, who signed and sealed the same in my presence and acknowledged to me that they had executed the same as their free act and deed for the uses and purposes therein mentioned. 467

In witness whereof, I have hereunto set my hand and affixed my official seal, the 22d day of May, A. D. 1879.

[SEAL.] (Sgd.) CHARLES NETTLETON,
Notary Public for New York, State of New York.
117 Broadway, N. Y. City.

STATE, CITY AND COUNTY }
OF NEW YORK. } ss.:

Be it remembered, that on this 22d day of May, 468
A. D. 1879, before me, Charles Nettleton, a Notary Public of the State of New York, for the County of New York, residing in said City of New York, personally appeared Rosewell G. Rolston, the President of The Farmers' Loan & Trust Company, to me personally known to be such, who being duly sworn did depose and say that he resided in the

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City and State of New York, that he was the President of the said Company, that he knows the corporate seal of said Company, that the seal affixed to the foregoing instrument is such corporate seal, that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order as the President of said The Farmers' Loan & Trust Company, and the said Rosewell G. Rolston being personally known to me to be the individual within described, acknowledged to me that he had executed the foregoing instrument as the act and deed of The Farmers' Loan & Trust Company for the purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal this 22d day of May, A. D. 1879.

(Sgd.) CHARLES NETTLETON,
Notary Public for New York, State of New York,
117 Broadway, N. Y. City.

THE STATE OF ALABAMA, }
County of Mobile. }

Be it remembered, that on this, the 7th day of June, A. D. 1879, before me, Saml. C. Muldon, a Notary Public in and for the County of Mobile, State of Alabama, and Port of Mobile, personally appeared A. S. Rives, the Vice-President of the Mobile and Ohio Railroad Company, to me personally known to be such, who being by me duly sworn did depose and say that he resides in the Port of Mobile, that he is the Vice-President of the Mobile and Ohio Railroad Company, that he knows the corporate seal of said Company, that the seal affixed thereto by order of the Board of Directors of said

Company to the foregoing instrument is such corporate seal, and that he signed his name thereto by the orders of said Board of Directors of said Company as the Vice-President of said Company. And the said A. L. Rives, Vice-President afore mentioned, being personally known to me to be the individual within described, acknowledged to me that he had executed the foregoing instrument as the free act and deed of the said The Mobile & Ohio Railroad Company for the uses and purposes therein mentioned. 473 474

In witness whereof, I have hereunto set my hand and seal as Notary Public in and for the Port of Mobile, County of Mobile and State of Alabama, this, the seventh day of June, A. D. 1879.

[SEAL.] (Sgd.) SAML. C. MULDON,
Notary Public,
Mobile County. 475

476

677 POWER OF ATTORNEY

TO

THE FARMERS' LOAN & TRUST CO., (NEW YORK),

TRUSTEES.

To all whom these presents shall come, or whom they may concern, we, William H. Hays and T. Haskins Du Puy, send greeting:

678 Whereas, we, as survivors of William S. Peirson in the Committee of Reorganization, so called, of the Mobile & Ohio Railroad Company, are holders of shares of the capital stock of the said railroad company standing in the names of Hays, Peirson and Du Puy on the books of the said company; and

Whereas, under an agreement bearing date the first day of October, 1876, made by and between the said railroad company and said Hays, Pierson and 679 Du Puy, the sundry of the creditors of the said company, certain provisions were made for the benefit of the holders of claims against said company, in pursuance of which provisions Preferred Income and Sinking Fund Debentures were or are about to be issued to the former holders of many of said claims; and

Whereas, a trust deed has been or is about to be executed and delivered by the said railroad company to The Farmers' Loan & Trust Company, its 680 successors or assigns, conveying certain property for the benefit and security of the holders of said debentures, and it is a part of said arrangements (evidenced by the said agreement and said trust deed) that for the security of the said debenture holders the said The Farmers' Loan & Trust Company, its successors or assigns, shall have power and authority (irrevocable while any of the said

debentures remain outstanding) to act as proxy and 481
vote for the holders of said shares of stock at any meetings of the shareholders of the said company which may be convened pursuant to law or to the charter or by-laws of said company.

Now, know ye that we, the said William H. Hays and T. Haskins Du Puy, as survivors as aforesaid, for and in consideration of the premises and of the sum of one dollar to us in hand paid by the said The Farmers' Loan & Trust Company, the receipt whereof is hereby acknowledged, and for the 482
better security of the holders of the said debentures and in pursuance and in consummation of said agreements, while retaining for ourselves and our assigns, holders of the said shares of stock and the respective parcels into which the same may hereafter be sub-divided, all other rights and privileges which pertain to the ownership of said stock, have nominated, constituted, and appointed in our place and stead, put and deputed, and by these presents do nominate, constitute and appoint, and in our 483
place and stead put and depute the said The Farmers' Loan & Trust Company, and its successors in the trust created by the said trust deed, for us and in our names and in the names of our assigns, holders of said shares, or any of the several parcels into which they may be hereafter sub-divided, or lawfully otherwise (irrevocable while any of the said debentures are outstanding) to vote, pursuant to the charter and by-laws of the said company and lawfully otherwise, and as fully to all intents and pur- 484
poses as we ourselves or our assigns while holders of said shares or any of them, could vote at any meeting of the stockholders of said corporation which may hereafter be called; and that as fully to all intents and purposes as the holders of said shares and the respective parcels thereof could do if these presents had not been executed, with full

power of appointing substitutes and proxies and revoking such appointments and making new ones. And we hereby covenant and agree for ourselves and our assigns, holders of the said shares of stock or any thereof, that so long as any of the said debentures be outstanding neither we nor our successors nor any of our assigns, holders of the said shares of stock shall or will withdraw the power and authority hereby given, nor undertake to exercise the privilege of voting upon said shares of stock or any or either thereof without the consent of our said attorneys hereby constituted; and we hereby ratify and confirm all that our said attorneys and their substitute or substitutes, proxy or proxies lawfully appointed shall lawfully do by virtue hereof.

Witness our hands and seals at the city of New York, this

[**Form of Bond.**]

First Mortgage Bond. Issue of 1879.

Principal Due 1927. Issue Limited to $7,000,000.

No. $1,000.

United States of America,

States of Alabama, Mississippi, Tennessee and Kentucky.

The Mobile & Ohio Railroad Company acknowledges itself to be indebted to the bearer, or to the registered holder hereof, for value received, in the sum of one thousand dollars in gold coin of the

United States of the present standard of weight and 489
fineness, and hereby promises to pay such sum to the bearer hereof, or to the registered holder hereof, at its agency in the City of New York, on the first day of December, A. D. 1927, and also meanwhile to pay the interest thereon at the rate of six per cent. per annum, as expressed in the coupons herewith issued, on the first days of June and December respectively in each year, on the presentation of the said coupons as they severally become due.

"This bond is issued under and in pursuance of 490
certain agreements for the compromise, extension and forbearance of the original indebtedness of the said The Mobile & Ohio Railroad Company, and is not received by the holder in payment or extinguishment of such original indebtedness in whole or in part, except as provided for in and by the agreements and mortgage herein referred to; and it is one of an issue amounting in the aggregate to seven millions of dollars principal money, and is entitled to the benefit and security of certain decrees establishing 491
and adjusting such original indebtedness until such decrees shall be satisfied, cancelled or extinguished, as well as to the benefit of a mortgage made by the said The Mobile and Ohio Railroad Company to the Farmers' Loan and Trust Company, as Trustees, bearing even date herewith, and to the benefit of the covenants and conditions in said agreements, decrees, and mortgage contained, and is issued subject to the rights given and conferred by said agreements, decrees, and mortgage, to all of which refer- 492
ence is hereby made. And it is agreed that in case payment of any of the coupons issued with this bond shall be refused upon presentation of such coupon as provided therein at or after the maturity of such coupon, and if such non-payment shall continue for the space of six months after such presentation, then and in that case the principal sum se-

cured by this bond shall become and be immediately due and payable, anything herein contained to the contrary notwithstanding.

"The holder of this bond may, from time to time, have the same registered on the books of said Railroad Company, on payment of such fee therefor and under such regulations as the Company may establish, such registry being noted on the bond itself by the Company's transfer agent, after which no transfer shall be valid unless made on said books by the registered holder, in person or by attorney duly authorized, and simultaneously noted on the bond, but the same may be discharged from registry by being in like manner transferred to bearer, after which it shall be transferable by delivery. The registry of the bond as above shall not restrain the negotiability of the coupons by delivery, but the coupons may be surrendered and interest on the bond will thereafter be payable only to the registered holder of the bond.

"This bond shall not be entitled to the benefit of the security provided as above, nor operate against said Company as an evidence of debt or otherwise until there shall be endorsed hereon a certificate signed by the Farmers' Loan and Trust Company or its successors, identifying the same as being one of the bonds issued under the said mortgage of seven millions of dollars.

"In testimony whereof, the said The Mobile and Ohio Railroad Company has hereunto set its corporate seal and caused these presents to be attested by its President and Secretary, the first day of May, 1879.

President."

Secretary."

[Form of Coupon.] 497

"The Mobile & Ohio Railroad Co. will pay bearer, in any lawful money of the United States, the sum of thirty dollars, on the first day of June, at the agency of the said Company, in the City of New York, or at Mobile, at the option of the holder hereof, being interest on mortgage.

Bond No.

A. L. WILLOUGHBY,
Treasurer." 498

[Form of Debenture.]

First Preferred (Second, Third and Fourth) Income and Sinking Fund Debenture.

UNITED STATES OF AMERICA,

States of Alabama, Mississippi, Tennessee and Kentucky. 499

No. $1,000.

THE MOBILE & OHIO RAILROA COMPANY.

This is to certify that is entitled to the sum of dollars out of the Sinking Fund created by the Mobile and Ohio Railroad Company for the benefit of the holders of the several series of preferred income and sinking fund debentures issued by it, which sinking 500 fund is created by and described in the deed of trust made by the said Railroad Company to the Farmers' Loan and Trust Company, bearing date the first day of May, 1879. The said sinking fund consists of the proceeds of the lands described in the said trust deed, and of the surplus income so far as directed by said deed of trust, which proceeds and surplus

income are to be applied to the purchase of the said preferred income and sinking fund debentures in the order of their priority and in the manner directed by the said deed of trust.

—This debenture is issued pursuant to the terms of certain agreements heretofore made by the said Railroad Company for the compromise, extension and forbearance of its former indebtedness, and it does not bear interest at any fixed annual rate; but whenever it shall be ascertained that the net earnings or income of any one year amount to one per cent. or a multiple of one per cent. upon the principal amount of debentures embraced in any one series of debentures, after providing for prior charges on the gross earnings, such net earnings or income for that year are to be applied, pursuant to the terms of said trust deed, to the payment of interest on such series of debentures, no one payment of interest to exceed seven per cent. on the principal amount of such debentures; and the board of directors of said Railroad Company, in whose election the debenture holders participate, as provided in said deed of trust, are to determine the amount of such net earnings or income so applicable to the payment of interest.

—The registered holder of this debenture is entitled, at the meetings of the holders of said debentures to be held pursuant to the terms and provisions of said deed of trust, to cast one vote for each one hundred dollars of principal money herein expressed, upon the question of instructing the trustees named in said trust deed, and its successors, how to vote for directors of the Mobile and Ohio Railroad Company; and the holder of this debenture is also entitled to cast a like vote at all other meetings of said debenture holders called pursuant to the terms of the said trust deed, for any purpose for which said debenture holders may properly and lawfully

be convened. This debenture is transferable only 505
upon the books of the said The Mobile & Ohio Railroad Company at the City of New York, in person or by attorney, upon the surrender of this certificate, or upon a simultaneous endorsement hereon, and under such regulations as the board of directors of said Railroad Company may from time to time prescribe.

"In witness whereof, the said The Mobile and Ohio Railroad Company has hereunto set its corporate seal, and 506
caused these presents to be attested by its officers thereunto duly authorized, this day of 18 .

[L. S.]

President.

Secretary.

Countersigned and registered. 507

THE FARMERS' LOAN & TRUST COMPANY,
Trustees."

By

President.

508

509 **[Form of Stock Certificate.]**

ALABAMA, MISSISSIPPI, TENNESSEE AND KENTUCKY.

Authorized Capital, $10,000,000.

Number, Shares.

510 MOBILE & OHIO RAILROAD COMPANY.

ASSENTED.

Be it known that entitled to shares of the Capital Stock of the Mobile & Ohio Railroad Company, one hundred dollars per share having been paid on the same, said shares being transferable on the books of the Company only by the above-named in person or by attorney, upon the surrender of
511 this certificate, and subject to the power of attorney herein referred to.

It is understood and declared that the ownership by the said and his assigns, of the said shares of stock, entitles them to all the rights and privileges which pertain to the ownership of the said shares, including the right to such dividends and profits as shall be ascertained and declared upon the capital stock of the said company, saving and excepting that such ownership is
512 subject to a power and authority heretofore granted by the owners of said shares to the Farmers' Loan and Trust Company, in trust for the benefit and security of the Preferred Income and Sinking Fund Debentures, issued by said Railroad Company, by virtue of which power and authority the said the Farmers' Loan and Trust Company is, and its successors will be entitled in person or by proxy to vote

upon the said shares of stock at all the meetings of 113
the stockholders of the said company, which may be hereafter for any purpose convened during the continuance of said trust, and so to vote in the name of either the present or future holders of said shares, or in the name of the said the Farmers' Loan and Trust Company, or its successors or proxies.

In witness whereof, the signature of the President and the counter signature of the Secretary and the seal 114
of said company are hereunto affixed this day of 18 .

President.

Secretary.

Countersigned and Registered,
The Farmers' Loan and Trust Co.,
Registrars.
by
Pres't. 115

116

Deposition of Adrian Iselin.

1

CIRCUIT COURT OF THE UNITED STATES.

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement bonds of Tennessee issued to the Mobile & Ohio Railroad Co.,

vs.

THE MOBILE & OHIO RAILROAD CO.

2

Before WILLIAM H. DELANCEY,
Notary Public,
52 Broadway.

NEW YORK, April 16th, 1880. 3

Present—MR. L. E. WRIGHT,
For Respondents.
MR. E. L. ANDREWS,
For Complainants.

ADRIAN ISELIN, a witness produced on the part of the respondents, being by me first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says: 4

(Deposition taken subject to all legal objections of both parties.)

5 *Direct-examination* by Mr. WRIGHT:

1 Q. Please state your name, age, residence and occupation.

A. Adrian Iselin; residence New York City; of full age; banker and merchant.

2 Q. How long have you have been such banker and merchant?

A. Over thirty years.

3 Q. Were you in any way connected with the substitution by the Mobile & Ohio Railroad Com-
6 pany of its own bonds for the debt which it owed the State of Tennessee on account of bonds loaned to it under the Internal Improvement Laws of the State?

A. I was. I was appointed by the Mobile & Ohio Railroad Company in conjunction with Mr. R. T. Wilson and Wm. B. Duncan, its agent, to pay off the debt it owed the State of Tennessee, and to substitute therefor the bonds of the railroad company. I was also made trustee for these bonds.

7 4 Q. Please examine the copy here handed you of the proceedings of the Board of Directors of the Mobile & Ohio Railroad Company of the 25th of May, 1871, and state if these resolutions are the same by which Messrs. Wilson, Duncan and yourself were appointed trustees, and if the same is a true copy?

A. Yes.

(Copy offered in evidence; marked Respondents Exhibit No. 1, W. H. D. L., N. P.)

8

5 Q. Please examine copy of the Deed of Trust purporting to be made by said Mobile & Ohio Railroad Company to Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson as Trustees, and state whether the same is a true copy, and say whether the same was made and executed for the purposes therein set forth, and whether the 1685 bonds of

said company therein described were delivered to 9
said Duncan, Iselin and Wilson, trustees, and whether you are the Adrian Iselin therein mentioned as trustee?

A. I am the Adrian Iselin mentioned in this deed of trust as trustee, and as far as I can recollect this deed of trust, which I now submit in evidence, is a true copy of the one to which I subscribed my name; it was executed for the purposes therein set forth, and I know that the 1685 bonds therein mentioned were delivered to the trustees. 10

(Copy deed of trust offered in evidence; marked Respt's Exhibit No. 2, W. H. D. L., N. P.)

6 Q. Please state what was done by yourself and the other trustees mentioned in said deed of trust in the execution of your duties as agent of said Company and as trustee under said deed of trust. Give a full history, so far as you are cognizant of 11
the same, of the settlement with the State of Tennessee, if any was made, and of the disposition made of said Company's substitution bonds?

A. I had in conjunction with Messrs. Wilson & Duncan advanced to the Mobile & Ohio Railroad Company the cost of the Tennessee State bonds, bought by it through R. T. Wilson & Co., and when the Mobile & Ohio Railroad delivered to us the 1685 bonds mentioned in the deed of trust, I, in conjunction with Messrs. Wilson & Duncan delivered to the 12
agent of the State of Tennessee the State bonds on which we had made advances, and took his receipt for the payment of the debt due by the Mobile & Ohio Railroad Company, to the State of Tennessee. Exhibit No. 3, to the answer of the Mobile & Ohio Railroad Company in this suit is a true copy of this receipt. The Comptroller of the State of Ten-

5 *Direct-examination* by Mr. WRIGHT:

1 Q. Please state your name, age, residence and occupation.

A. Adrian Iselin; residence New York City; of full age; banker and merchant.

2 Q. How long have you have been such banker and merchant?

A. Over thirty years.

3 Q. Were you in any way connected with the substitution by the Mobile & Ohio Railroad Com-
6 pany of its own bonds for the debt which it owed the State of Tennessee on account of bonds loaned to it under the Internal Improvement Laws of the State?

A. I was. I was appointed by the Mobile & Ohio Railroad Company in conjunction with Mr. R. T. Wilson and Wm. B. Duncan, its agent, to pay off the debt it owed the State of Tennessee, and to substitute therefor the bonds of the railroad company. I was also made trustee for these bonds.

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(Copy offered in evidence; marked Respondents Exhibit No. 1, W. H. D. I., N. P.)

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5 Q. Please examine copy of the Deed of Trust purporting to be made by said Mobile & Ohio Railroad Company to Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson as Trustees, and state whether the same is a true copy, and say whether the same was made and executed for the purposes therein set forth, and whether the 1685 bonds of

said company therein described were delivered to 9
said Duncan, Iselin and Wilson, trustees, and whether you are the Adrian Iselin therein mentioned as trustee?

A. I am the Adrian Iselin mentioned in this deed of trust as trustee, and as far as I can recollect this deed of trust, which I now submit in evidence, is a true copy of the one to which I subscribed my name; it was executed for the purposes therein set forth, and I know that the 1685 bonds therein mentioned were delivered to the trustees. 10

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6 Q. Please state what was done by yourself and the other trustees mentioned in said deed of trust in the execution of your duties as agent of said Company and as trustee under said deed of trust. Give a full history, so far as you are cognizant of 11
the same, of the settlement with the State of Tennessee, if any was made, and of the disposition made of said Company's substitution bonds?

A. I had in conjunction with Messrs. Wilson & Duncan advanced to the Mobile & Ohio Railroad Company the cost of the Tennessee State bonds, bought by it through R. T. Wilson & Co., and when the Mobile & Ohio Railroad delivered to us the 1685 bonds mentioned in the deed of trust, I, in conjunction with Messrs. Wilson & Duncan delivered to the 12
agent of the State of Tennessee the State bonds on which we had made advances, and took his receipt for the payment of the debt due by the Mobile & Ohio Railroad Company, to the State of Tennessee. Exhibit No. 3, to the answer of the Mobile & Ohio Railroad Company in this suit is a true copy of this receipt. The Comptroller of the State of Ten-

13 nessee signed a certificate on each of the 1685 bonds issued by the Mobile & Ohio Railroad Company, stating in substance that the debt of the Mobile & Ohio Railroad Company to the State of Tennessee had been paid, and that the present bonds of the Railroad were guaranteed by the lien which the State held against the Mobile & Ohio Railroad Company as security for the debt due by it. I file herewith a copy of one of said bonds, they being all facsimilies, except as to the number:

14 (Copy bond offered in evidence; marked Respondent's Exhibit No. 3, W. H. D. L., N. P.)

These substitution bonds were then purchased by my firm of A. Iselin & Co., R. T. Wilson & Co., Duncan, Sherman & Co., and some bankers in Europe, and resold by us to a syndicate of European bankers. My firm and R. T. Wilson & Co. keeping an interest in this syndicate. The syndicate
15 then advertised the bonds for sale, issuing a circular concerning them, signed by my firm. This circular was in French, a copy of which is herewith filed.

(Copy circular offered in evidence; marked Respt's Exhibit No. 4, W. H. D. L., N. P.)

A correct translation of the same is also herewith filed.

16 (Copy translation offered in evidence; marked Respt's Exhibit No. 5, W. H. D. L., N. P.)

The bonds were all sold in one day, and as far as I know, to parties living in Europe.

7 Q. State what information, if any, you gave to the European Syndicate who sold said substitution

bonds touching the validity of said bonds, and especially whether you communicated to them anything in reference to the opinion of Davies and Davis that the holders of the Tennessee State bonds originally loaned to railroads in Tennessee had a lien on the roads of said companies situated in Tennessee for the payment of said bonds, or that any holder of said Tennessee State bonds which had been loaned to said Mobile & Ohio R. R. Company claimed that said bonds constituted a lien upon the property of said company situated in Tennessee? 17 18

A. I gave no other information to the syndicate who had purchased the Mobile & Ohio substitution bonds as to the validity of these bonds except what was contained in the circular signed by my firm and which I have put in proof. I said nothing about Davies & Davis opinion because I attached no importance to it, and I could say nothing about the claim of Tennessee State bondholders against the railroads because no such claim had been made at the time these substitution bonds were put on the market. 19

8 Q. When was this opinion of Davies & Davis first called to your attention, and did the same receive any extensive circulation in New York or elsewhere?

A. In the Spring of 1870 at the time I was engaged in the purchase of the East Tennessee, Virginia & Georgia Railroad Company substitution bonds, I never saw but one copy of it, and did not hear that it had been circulated to any extent. Whilst the substitution bonds of the East Tennessee, Virginia & Georgia railroad, and the Nashville & Decatur Railroad were being advertised for sale, I never heard anything more about this opinion, nor that any holder of Tennessee State bonds had the intention to act upon it. 20

9 Q. When was it that the substitution bonds of

21 the East Tennessee, Virginia & Georgia Railroad Company, and of the Nashville & Decatur Railroad Company were offered for sale and when were they offered for sale. State also the amount of the issues of these two companies of their substitution bonds, and in this connection state all you know in relation to their sale on the New York market or elsewhere.

A. The bonds of the Nashville & Decatur Railroad Company were advertised for sale in several papers in New York on the 31st December, 1870.
22 A circular in relation to them was also issued under date January, 1871.

(Copy advertisement and circular offered in evidence and marked Respondent's Exhibit No. 6, W. H. D. L., N. P.)

The amount of substitution bonds issued by the Nashville & Decatur Railroad Co. was $2,100,000. These were issued in the place of $2,702,997.10 due by
23 the Nashville & Decatur to the State of Tennessee.

The substitution bonds of the East Tennessee, Virginia & Georgia Railroad Company were first offered for sale in Europe the summer of 1870, and a portion of them sold, and subsequently in 1871, $1,100,000 of these bonds were offered for sale in New York, a circular in relation to them was issued, and they were advertised in the papers; and I file herewith as a part of my answer a copy of said circular, and also copies of advertisements of the East
24 Tennessee, Virginia & Georgia Railroad substitution bonds, which appeared in the *Commercial Advertiser*, *Tribune*, *Times*, *World*, *Journal of Commerce*, *Evening Post* and *Financial Chronicle*; the advertisement of the Nashville & Decatur substitution bonds appeared in *Evening Post*, *World*, *Commercial Advertiser*, *Bulletin*, *Times*, *Tribune*, *Observer*, *Christian Advocate*, *Independent*, *Fi-*

nancial Chronicle of New York, and *Union* of 25
Brooklyn.

(Copies advertisement and circular of East Tennessee, Virginia & Georgia Railroad Company substitution bonds offered in evidence, and marked Respondent's Exhibit No. 7, W. H. D. L., N. P.)

These advertisements were kept in these papers for some time; they are papers of the widest circula- 26
tion among commercial men.

The amount of substitution bonds issued by the East Tennessee, Virginia & Georgia Railroad Company was $3,500,000, in place of $4,117,761.10 due the State of Tennessee.

10 Q. During the time the substitution bonds of these two companies and of the Mobile & Ohio Company were being advertised, negotiated and sold, did you hear of any objection being made by any holder of Tennessee State bonds or any claims that said 27
bonds constituted a lien on these roads, and if you answer in the negative, state when it was that you first heard of any such claim being advanced by any holder of Tennessee State bonds.

A. No; I never heard of any claim being made by any holder of Tennessee State bonds as holding a lien against the railroads whilst the negotiation and sale of the Nashville & Decatur and East Tennessee, Virginia & Georgia Railroad and Mobile & Ohio substitution bonds were being made here and 28
in Europe; the first time I heard of such a claim being set up was in the fall of 1877; when the appeal was made to the Supreme Court of the United States in the case of the Mobile & Ohio Railroad.

11 Q. Do you know Ernest Saladin and Augusta Iselin, and if so how long have you known them, where do they reside; are they citizens of the Uni-

ted States, and if not of what country are they citizens or subjects?

A. I have known them both for more than twenty years; neither of them is a citizen of the United States; Ernest Saladin is a citizen of Switzerland, Augusta Iselin is a citizen of France.

12 Q. Did the said Ernest Saladin and Augusta Iselin, or either of them, become the purchasers of any of the substitution bonds of the said Mobile & Ohio R. R. Co. from said European syndicate, who as you have already stated sold them; also state, if you know, when they became purchasers, and what they paid for said bonds, and give the number of bonds bought by each.

A. I know that both these parties did purchase Mobile & Ohio substitution bonds, but do not know whether they purchased them direct from the syndicate, or from other parties who had purchased them from the syndicate. Ernst Saladin purchased $6,000 of these bonds at about 91½ in gold; the other two thousand he owns. I do not know what he paid for them. The bonds were purchased before February, 1874; but I cannot tell the exact time when they were purchased. Augusta Iselin purchased six bonds in December, 1871. I do not know whether she purchased them from the syndicate or not, nor the exact price she paid for them, but it must have been at about 91 to 92, and accrued interest, in gold, as that was the price at which the bonds were sold at that time.

13 Q. State whether the said Ernest Saladin and Augusta Iselin, or either of them, knew of the said opinion of Davies and Davis, or of the claim advanced by complainants and their associates, that the Tennessee bonds held by them which were loaned to the Mobile & Ohio R. R. Co. constitute a lien upon its property in Tennessee?

A. As far as the opinion of Davies and Davis is 33
concerned, I do not think it possible that they should have seen it or heard of it, and I never heard of any copy of it having been sent to Europe, and, as no mention of this opinion was ever made by any of our correspondents in Europe, they could not possibly have known at the time they purchased the bonds of the claim made by complainants, for this claim was only made many years after those bonds had been purchased by the above parties.

14 Q. State, if you know, whether the entire is- 34
sue of said Mobile & Ohio Tennessee substitution bonds was sold in Europe to purchasers residing there, and whether the same statements you have made with reference to the want of knowledge of said Saladin and Iselin of the opinion of Davies and Davis, and of the claim advanced by complainants and other holders of Tennessee State bonds loaned to the Mobile & Ohio R. R. Co. by the State, of a lien on the property of said company situated in Tennessee, applies to such other purchasers? 35

A. The whole of the Mobile & Ohio substitution bonds were sold to parties residing in Europe, and they could not have any more knowledge of Davies and Davis' opinion and of the claim made by complainants than as I stated Ernest Saladin and Augusta Iselin had.

15 Q. State, if you know, whether or not the said Ernest Saladin and Augusta Iselin became parties to the scheme of reorganization and compromise of 1876, by which the creditors of the said Mobile & 36
Ohio R. R. Co. transferred their claims and securities to a committee of which Wm. H. Kays was chairman, and, if so, whether they transferred said substitution bonds to said committee, and afterwards received new bonds of said company in lieu thereof?

37 A. I know they did so.

ADRIAN ISELIN.

Subscribed and sworn to before me, this 19th day of April, 1880.

WILLIAM H. DELANCEY,
Notary Public,
Westchester County.

[L. S.] Acting in New York under and by virtue of chapter 807 of the Laws of 1873 of the State of

38 New York.

Certificate.

UNITED STATES OF AMERICA,
Southern District of New York,
State and County of New York. } ss.:

I, WILLIAM H. DELANCEY, a Notary Public, in and for the State and County aforesaid, and duly commissioned and qualified under the laws of the

39 United States to take depositions for use in the Circuit Courts of the United States, do hereby certify that the reason for taking the foregoing deposition is, and the fact is that the testimony of the said witness is material and necessary for the respondents in the cause in the caption of said deposition named, and that the said witness lives, and did live at the time of taking said deposition in the City and County of New York, the same being at a greater distance than one hundred miles from the

40 City of Memphis, where the Court, at which it is expected the said cause will be tried, was appointed to be held, to-wit: more than five hundred miles therefrom.

I further certify that the said witness was examined and cross-examined by the counsel for the respective parties to the cause named in the caption hereto.

I further certify that on the 16th day of April, A. 41
D. 1880, I was attended at my office, No. 52 Broadway, in the City, County and State of New York, in the Southern District of New York aforesaid by L. E. Wright, Esq., solicitor, and of counsel for the respondents, E. L. Andrews, Esq., solicitor and of counsel for complainant, and by Adrian Iselin, the witness, who was of sound mind and of lawful age, and the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the de- 42
position was by me reduced to writing in the presence of the witness and from his statements, and after carefully reading the same to witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of annexing the several Exhibits, and of sealing up and directing the same with this certificate of the reasons aforesaid for taking the said deposition, with my own hand, to the Court for which the same was taken. 43

And I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In witness whereof, I have hereunto set my hand and seal this 19th day of April, in the year of our Lord, one thousand eight hundred and eighty, and of the Independence 44
of the United States the one hundred and fourth.

WILLIAM H. DELANCEY,

[L. S.] *Notary Public,*

Westchester County.

Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

RESPONDENTS' EXHIBIT No. 1.

W. H. D. L., N. P.

MORTGAGE IN TENNESSEE.

RESOLUTIONS

OF

MOBILE AND OHIO RAILROAD COMPANY.

At a called meeting of the Board of Directors of the Mobile and Ohio Railroad Company, held 25th May, 1871, the following preamble and resolutions were unanimously adopted:

Whereas, At sundry times, heretofore, to enable this Corporation to iron, equip and complete its line of railway through the State of Tennessee, said State of Tennessee, under and by virtue of its general Internal Improvement Laws, and of other Acts amendatory and supplementary thereto, theretofore passed, and then in full force, loaned to this Company, or has advanced for its benefit, bonds of the said State of Tennessee, to the aggregate sum of one million six hundred and eighty-four thousand eight hundred dollars ($1,684,800.)

Whereof payment, both of principal and accruing interest, was to be made by this Company, as the same matured, and for the security of which, payments of principal and interest, a lien was reserved to said State upon the entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the Company, as incident to, or necessary for its business; and all depots and depot stations, and all the property and assets at-

tached thereto, or belonging to said Company, lying 49
within the limits of said State, with power to seize,
and in default of payment of the principal, to sell
in the nature of a mortgage lien, as appears by refe-
rence to the said Statutes of the State of Tennessee.

And Whereas, By Act of the said State of Ten-
nessee, Chapter xxxviii., passed at the second
session of the thirty-fifth General Assembly of the
State, entitled, "An Act to liquidate the State Debt
contracted in aid of Railroad Companies in the
State of Tennessee," passed February 25, 1869, it is 50
among other things enacted, that any person or cor-
poration may, with the consent of the Board of Di-
rectors of any Railroad Company, so having re-
ceived aid under said General Internal Improvement
Law, passed 11th February, 1852, and the amend-
ments thereto, pay off the indebtedness of such
Railroad Company, to the said State, in the mode
and manner therein provided, and with the consent
of such Railroad Company upon such payment be
subrogated to all the lien or liens, which the State 51
of Tennessee had, or has, upon said Railroad, or
its property, and have the same right to enforce the
same, which the State of Tennessee had.

And Whereas, This Corporation is desirous to
avail itself of the provisions of said law, and return
to said State of Tennessee the like amount of bonds
of said State, as have heretofore been loaned to it,
or advanced for its benefits, by an issue of its own
bonds, to be exchanged for said State bonds, with
the holders thereof, and at the same time to secure 52
to the holders of said substituted bonds in good
faith all the protection and security which the said
State of Tennessee held for its protection and in-
demnity against loss and damage, by reason of its
said loan to the said Mobile and Ohio Railroad Com-
pany, by virtue of the laws of the said State, were
no change made in the form of security originally

held by said State, according to the true intent and meaning of the Act passed 25th February, 1869.

Therefore, Be it resolved by the Board of Directors of the Mobile and Ohio Railroad Company as follows:

1st. The President of this Company is hereby authorized and empowered to cause to be prepared and issued, under the seal of this Company to the amount of one million six hundred and eighty-five thousand dollars ($1,685,000), the same to be signed by the President, or in his absence, by one of the Vice-Presidents, and countersigned by the Secretary and Treasurer, said bonds to be made payable in Gold coin of the United States, in the City of New York, or in the City of London, at the option of the holder; to be each for the sum of one thousand dollars, or two hundred and five pounds Sterling, and payable on the 1st day of July A. D. 1901. Said bonds to bear interest at seven per centum per annum, payable semi-annually, or 1st January and July in each year, at New York or London, at the option of the holder, and for which interest, coupons or interest warrants are to be attached to said bonds.

2d. That Wm. Butler Duncan, Adrian Iselin, and Richard T. Wilson, their survivors and survivor, are hereby declared the Agents of this Company, to effect the substitution of its said bonds, as above authorized, in place of the said bonds of the State of Tennessee, for the purposes and objects declared in the preamble to these resolutions; and upon and from and after such substitution, and as rapidly as the same is effected, the said Wm. Butler Duncan, Adrian Iselin, and Richard T. Wilson, their survivors and survivor, and their successors, are hereby declared to be Trustees for the mutual benefit of this Company, and of the holders of said bonds, and are hereby authorized to defend and

protect the rights conferred on the holders of said 57
bonds by the said acts and laws of the said State of Tennessee, and hereby acknowledged and recognized. In case of the death or resignation of any of said Trustees, the vacancy shall be filled by the joint appointment of the remaining Trustees or Trustee, and the President of the Mobile and Ohio Railroad Company, with the approval of its Board of Directors; and if all become incapable of acting, new Trustees are to be appointed by this Company. 58

3d. This Company does hereby declare that it does and will at all times acknowledge and recognize the bonds herein authorized to be issued, when so substituted in the room and place of the said bonds of the State of Tennessee in manner herein and by said act provided, as entitled to, and in fact being a lien, in the nature of a first mortgage, upon all the property of this Company, in the said State, the same precisely as is now declared to exist in 59
favor of the said State of Tennessee, under and by virtue of the Statutes thereof, in pursuance of which the said loan and advance of State bonds was made to the Company.

And this Company does hereby covenant to and with the said Trustees, their survivors and survivor and successors, that it will in good faith do and perform all things, acts and deeds necessary and proper, and which it may be reasonably requested to do, for the protection of the rights of the holders 60
of said substituted bonds, and of said Trustees for their benefit, according to the true intent and meaning of the said acts and laws of the State of Tennessee, hereinbefore referred to, and of these resolutions; and further, that this Company shall and will, annually hereafter, from and after the first day of April, 1873, within three months thereafter,

and during each year, while said bonds, herein authorized, are running to maturity, provide and set apart from earnings of the Company a fund of at least one per centum of the amount of said bonds, and will annually faithfully apply said sums of money, so set apart, as a sinking fund to the purchase and gradual retirement of said bonds; and on or by the 1st day of April, 1874, and every year thereafter, till said bonds are fully retired, will furnish to said Trustees, evidence of the performance of this stipulation, as may be agreed on.

Resolved, That the President of this Company be, and he is hereby directed, under its corporate seal, to execute and deliver to said Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, as Trustees aforesaid, its deed for the uses and purposes herein declared and for the effectual protection and security of the holders of the bonds, hereby authorized to be issued, according to the true intent and meaning of these resolutions.

I certify the foregoing to be a true copy from the Minutes of the Board of Directors of the Mobile and Ohio Railroad Company.

(Signed)

Seal of the Comp'y

A. L. WILLOUGHBY,
Secretary M. & O. R. R. Co.

RESPONDENT'S EXHIBIT NO. 2. 65

W. H. D. L., N. P.

DEED OF TRUST

OF

MOBILE AND OHIO RAILROAD COMPANY.

66

THIS INDENTURE, made this first day of July, A. D. 1871, between the Mobile and Ohio Railroad Company, of the first part, Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, of the City and State of New York, their survivors and survivor, and successors, of the second part, and the holders of the bonds issued by said party of the first part, and herein described, of the third part,

Witnesseth, That whereas, under the General 67
Internal Improvement Laws of the State of Tennessee, passed 11th February, 1852, and the Acts amendatory thereto, the party of the first part has become liable to the State of Tennessee in the sum of one million six hundred and eighty-four thousand eight hundred dollars, being the amount of bonds of said State loaned to said party of the first part, and moreover is under obligation to pay to the State of Tennessee semi-annually an amount equal to the amount of the same annual interest 68
upon the said bonds so loaned, as well as an amount of money equal to the principal of said bonds, so loaned to the party of the first part, when and as the same become due and payable; and, whereas, by Act of the said State of Tennessee, entitled, "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee,"

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passed February 25th, 1869, the railroad companies, so receiving aid from the State, of which the party of the first part was one, are authorized to issue their own bonds to an amount equal to the bonds so received from said State, and are authorized so to use said bonds to retire and return to said State, bonds of said State of Tennessee to an amount equal to that loaned to said company, or advanced for its benefit; for the security of which new issue of bonds, the holders thereof, it is by said Act declared, shall, with the consent of such railroad company, be entitled to the lien, rights and privileges reserved to the said State for its own security and protection.

And Whereas, The party of the first part has accepted the terms and provisions of said Act, and has for the purpose aforesaid caused to be issued bonds, dated 1st July, 1871, to the extent of one million six hundred and eighty-five thousand dollars, and numbered from one to sixteen hundred and eighty-five (1685), inclusive, each for one thousand dollars, payable in gold coin of the United States, at New York, or two hundred and five Pounds Sterling, payable in London, at the option of the holder, with interest at seven per centum per annum, payable semi-annually, in gold coin, at New York, or in Sterling, at London, as aforesaid, at the option of the holder, for which interest Coupons or Warrants, payable as aforesaid, are attached to said bonds; and has delivered said bonds with the said Coupons attached to Wm. Butler Duncan, and Adrian Iselin, and Richard T. Wilson, as agents of the party of the first part, to be substituted in place of the claim and demand and liability now held against the party of the first part by the said State of Tennessee, for which purpose of substitution the said Wm. Butler Duncan, Adrian Iselin, and Richard T. Wilson are hereby

made and appointed the agents of the said party of 73
the first part, and which substitution under said agency, said parties of the second part are proceeding to make and perfect.

And Whereas, Under the laws of the said State of Tennessee, the said State has a lien upon the following named property of this State, to wit: The entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the 74
company as incident to or necessary for its business, and all depot stations, and all the property and assets attached thereto, or belonging to said Company, within the State of Tennessee, which under the said Act of 1869 upon the return of said State bonds to the said State of Tennessee by any person or corporation, with the consent of such indebted Railroad Corporation, shall enure to the benefit and for the security of the person or corporation so paying off the said indebtedness, or 75
liability, of such corporation to the State, or returning to it its said bonds

Now Then Know all Men by These Presents, That in consideration of the premises, and of the sum of Five Dollars to said party of the first part paid by the said parties of the second part, and to make good and secure the rights of the holders of the said bonds herein described; and now issued by the party of the first part, and who are in fact the payers of the said indebtedness of the said party of 76
the first part to the State of Tennessee, within the meaning of said Act of February 25th, 1869, and to the extent thereby authorized, the said party of the first part doth hereby consent that the said parties of the second part shall pay and satisfy to the said State of Tennessee the debt and liability due by the said party of the first part to the said State, and

doth hereby approve such payment, and doth also hereby consent that upon the payment aforesaid being made, or to the extent that it shall be made, and as it is, or may be, from time to time made, said parties of the second part shall, in pursuance of the terms and provisions of the Act last above herein referred to, be vested with and shall have and hold all the lien or liens which the State of Tennessee had or has upon the property of the said party of the first part, hereinbefore described, in the State of Tennessee, and shall have the same right to enforce the same, which the State of Tennessee had, and that said parties of the second part shall be, and are hereby, placed in the same position and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same. To Have and to Hold the rights, powers and privileges hereby consented to, and which arise under the said Act of the State of Tennessee with the consent and approval of the said Mobile and Ohio Railroad Company to them, the said parties of the second part, their survivors and survivor, and their successors, upon trust, however, for the use, benefit, advantage and security of the holders of the bonds herein described, issued by the said Mobile and Ohio Railroad Company, parties of the third part, to these presents, and their assigns, and it is hereby declared, that in case of the death or resignation of the said parties of the second part, the said party of the first part shall appoint new Trustees in their place and stead; and in case any one or two of said trustees die or resign such vacancy shall be filled by the joint appointments of the remaining Trustee, or Trustees, and the President of the Mobile and Ohio Railroad Company, with the approval for the Board of Directors thereof. And the said party of the first part doth agree and covenant to and with the said

parties of the second part, their survivors and sur- 81
vivor, and their successors, that it, the said party
of the first part, will in good faith and at all times
hereafter do and perform all things necessary and
proper for the protection and security of the said
parties of the third part, and of the second part,
and their assigns, as the same may be reasonably
required of it, to make good and effectual this lien
and security of said parties, about the payment of
their said debts and demands, and to secure the en-
forcement of their remedies of the payment of said 82
bonds and the interest accruing thereon, in case de-
fault be made in the payment of said bonds and
coupons, or any part or portion thereof, or default
be made in the performance of the covenant herein
contained, providing for the creation and applica-
tion of a sinking fund for the gradual retirement of
the bonds herein described, according to true in-
tent and meaning of these presents, and of the said
Acts hereinbefore referred to, of the General Assem-
bly of the State of Tennessee. And the said party 83
of the first part doth further covenant to and with
the said parties of the second part, and of the third
part hereto, and their assigns, that on the first day
of April, 1873, and on the first day of April of each
thereafter, said party of the first part will from the
net earnings of said road set aside an amount equal
to one per centum of the amount of bonds issued
and outstanding under the provisions hereof, as a
Sinking Fund for the redemption of the bonds se-
cured by these presents, and that it will invest said 84
Sinking Fund, and the interest accruing thereon, in
the purchase of the bonds herein secured, at a rate
not exceeding ten per centum above par, and accrued
interest; the bonds so purchased shall be immedi-
ately registered, stamped and endorsed, as irrevo-
cably belonging to said Sinking Fund, and not
further transferable, and said bonds and coupons so

purchased and assigned to the Sinking Fund by such registration, stamping and endorsement, shall be forever void and cancelled for all other purposes. In case bonds hereby secured cannot be purchased at or under the rate above named, within three months after the setting apart of such money for account of said Sinking Fund, then such other good securities as may be agreed on by the parties of the first and second part shall be purchased and assigned to said Sinking Fund, and all such securities shall be placed with such Depository and in such manner as said parties of the first and second part may from time to time agree upon; and the interest accruing upon said Sinking Fund shall be collected by the party of the first part, and invested as herein provided; and all securities assigned to or purchased for said Sinking Fund shall be, and hereby are, irrevocably pledged for the security and ultimate redemption of the principal and interest of the bonds hereinbefore described and issued by the said party of the first part for the uses and purposes herein declared. And the said parties of the second part are hereby released from executing the bond required of Trustees under Section 1974 of the Code of Tennessee. And the said parties of the second part do hereby accept the Agency and Trusts herein and hereby imposed upon them, and do promise and agree faithfully and to the best of their ability to perform the duties hereby provided to be done and performed by them.

It is understood that the Acts of any two of the said Trustees hereunder shall be valid and effectual in the performance of the duties hereby declared, the same as if all had joined therein; that said Trustees may in all cases act by an Agent duly appointed over their hand and seal, except in such matters as are by law required to be performed in their proper person; that they shall be fully indem-

nified and repaid by the said party of the first part, 88
including a reasonable compensation, or out of the Trust Funds which may come into their hands, for their reasonable cash fees and expenses by them incurred about the performance of the Acts and things herein and hereby required of them; and shall not be required to act in the execution of the trust herein declared, except at their own option, unless the party or parties requesting them so to proceed shall furnish them reasonable indemnity against the loss, costs, trouble and expense they 90
may incur or be at in so doing.

In Testimony Whereof, The said party of the first part has hereto set its Corporate Seal and the hand of its President, by authority of a resolution of its Board of Directors duly given. And the said parties of the second part have hereunto set their hands and seals.

(Signed)

ABRAHAM MURDOCK,

Seal of the Comp'y — President Mobile and Ohio Railroad Co. 91

W. BUTLER DUNCAN, [L. S.]
ADRIAN ISELIN, [L. S.]
R. T. WILSON, [L. S.]

Attest:

A. L WILLOUGHBY,
Secretary and Treasurer M. & O. R. R. Co.

STATE OF NEW YORK, } ss.
CITY AND COUNTY OF NEW YORK, } 92

On this seventh day of August, in the year of our Lord, one thousand eight hundred and seventy-one, in the City of New York and State of New York, personally appeared before me, the undersigned, George W. Colles, a Commissioner of Deeds for the State of Tennessee, resident in New York City, the within named Abraham Murdock, President of the

Mobile and Ohio Railroad Company, one of the within named bargainers, with whom I am personally acquainted, and who being first duly sworn deposes and says, that he is President of the Mobile & Ohio Railroad Company, and is acquainted with its corporate seal; that the seal purporting to be such, above affixed, is such corporate seal, and was duly affixed to the within instrument by him, the said President: and, also, he, the said President, set his hand thereto, both by authority of a resolution of the Board of Directors of said Company, duly given. And, also, then and there personally appeared William Butler Duncan, Adrian Iselin and Richard T. Wilson, others of the within named bargainers, before me, with each of whom I am personally acquainted, and who, each acknowledged, that he had executed the within instrument for the purposes therein contained.

Witness my hand and seal, the day and year first above written.

(Commissioner's Seal.)

(Signed) GEORGE W. COLLES,
Commissioner of Tennessee, in New York.

RESPONDENT'S EXHIBIT No. 3.—W. H. D. L., *N. P.*

$1,000. **£205.**

UNITED STATES OF AMERICA.

FIRST MORTGAGE,
7 PER CENT.

SINKING FUND.
GOLD BOND.

THE MOBILE AND OHIO RAILROAD COMPANY

Promises to pay to the holder of this Bond, on the first day of July, nineteen hundred and one, for value received, the sum of **ONE THOUSAND DOLLARS**, in Gold Coin of the United States of America, in the City of New York, or at his option, **TWO HUNDRED AND FIVE POUNDS** Sterling, in the City of London, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July of each year, either in Gold Coin of the United States of America in the City of New York, or in Pounds Sterling in the City of London, on delivery of the annexed interest warrant. This Bond being one of a series of Bonds of like tenor and date, numbered from 1 to 1685 inclusive, amounting in the aggregate to a sum not exceeding sixteen hundred and eighty-five thousand dollars, or three hundred and forty-five thousand four hundred and twenty-five Pounds Sterling, is substituted by consent of this Company for a like amount of its debt to the State of Tennessee, and is a First Mortgage Lien on one hundred and eighteen and one-half miles of said railroad, and all franchises and all other property of said Railroad Company within the limits of the State of Tennessee, and is entitled to the benefit of a sinking fund as set forth in the deed of trust to W. B. Duncan, A. Iselin, and R. T. Wilson. This Bond shall not become obligatory upon the Company until the Certificate endorsed hereon is signed by the Trustees.

REVENUE STAMP, FIVE CENTS.

25

IN WITNESS WHEREOF, The said Mobile and Ohio Railroad Company has caused this Bond to be signed by its President and Secretary, and its Corporate Seal to be hereunto affixed at the City of Mobile, Alabama, the first day of July, anno domini one thousand eight hundred and seventy-one.

SEAL
M.&O.R.R.CO.

I certify that W. B. Duncan, A. Iselin and R. T. Wilson, Trustees, by consent of the Mobile and Ohio Railroad Company, have substituted this Bond for the same indebtedness of said Company to the State of Tennessee, which indebtedness has been paid in full, and that this Bond is issued under authority of law, and takes the place of and is secured by the lien held by said State, being a first mortgage on that portion of the Mobile and Ohio Railroad within the limits of said State.

REVENUE ONE DOLLAR STAMP.

(Signed) E. R. PENNBAKER,
Comptroller of the State of Tennessee.

By WM. MORROW, Agent.

ABM. MURDOCK, President.
A. L. WILLOUGHBY, Secretary.

100 99 98 97

607

104

$35. **£7, 3s. 6d.**

THE MOBILE & OHIO RAIL-ROAD COMPANY

WILL PAY BEARER

On first day of June, 1881,

As he may elect, thirty-five dollars in United States Gold Coin, in the City of New York, or seven pounds, three shillings and sixpence sterling, in the City of London, for six months interest on Bond No. ——.

A. L. WILLOUGHBY,
Secretary.

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FIRST MORTGAGE

SEVEN PER CENT.

SINKING FUND GOLD BOND.

MOBILE & OHIO RAILROAD COMPANY.

$1,000,

OR

£205.

PRINCIPAL

Due 1st July, 1901.

INTEREST

Payable 1st July and 1st January.

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This Bond may be registered in the owner's name on the Company's Books, such registry being noted on the Bond by the Company's Transfer Agent, after which no transfer shall be valid unless made on the Company's Books by the registered owner, and similarly noted on the Bond; but the same may be discharged from registry by being transferred to bearer, after which it shall be transferrable by delivery, but it may be again registered as before. The registry of the Bond as above shall not restrain the negotiability of the Coupons by delivery.

101

TRUSTEE'S CERTIFICATE.

We certify that this Bond is one of a series not exceeding sixteen hundred and eighty-five thousand dollars, or three hundred and forty-five thousand four hundred and twenty-five pounds sterling, substituted by us by consent of the Mobile and Ohio Railroad Company, for a like amount of the said Company's indebtedness to the State of Tennessee.

R. T. WILSON,
W. BUTLER DUNCAN,
ADRIAN ISELIN,
Trustees.

96

RESPONDENT'S EXHIBIT No. 4. 105

W. H. D. L., N. P.

EMPRUNT 7% OR.

Première Hypothèque

DU

CHEMIN DE FER MOBILE ET OHIO

EMISSION DE DOLL. 1,685,000

106

En 1,685 Obligations au Porteur de Doll. 1,000 or ou Liv. Stl. 205.

Intérêt **7** % payable par semestres $\frac{\text{1er Janvier}}{\text{1er Juillet}}$ en **35** Dollars or à New-York, ou en Liv. stg. 7. 3½ s. à Londres, à l'Union Bank, au choix des porteurs.

107

Remboursement au pair, soit $\frac{\text{en Doll. or 1,000,}}{\text{en Liv. stg. 205,}}$ au plus tard en 1901

Toutefois, la Compagnie doit, à partir de 1873, former un fonds d'amortissement au moyen d'un prélèvement annuel de 1% du montant nominal de l'Emprunt, et elle est tenue de procéder a l'amortissement par voie de rachat des Oligations, aussi long- 108
tempts qu'elle peut le faire a 110% ou au-dessous. A défaut, le fonds d'amortissement doit être placé en valeurs de premier ordre, dont le produit sera appliqué au remboursement des Obligations a l'échéance.

Le chemin Mobile et Ohio, d'une longuer totale de 507 miles anglais, entièrement achevés, commence a

109 Mobile, sur le Golfe du Mexique traverse les Etats d'Alabama, Mississippi, Tennessee et Kentucky, et aboutit a Columbus et Cairo, sur le Mississippi, ou il se relie aux deux grandes lignes du St.-Louis et Iron Mountain, et de l'Illinois Central, formant ainsi une artére directe et presque rectiligne entre les principaux ports du Sud, en particulier la Nouvelle-Orléans et Mobile d'une part, et les grandes cités de l'Ouest, St-Louis, Chicago, d'autre part. Cette Compagnie, déja ancienne, et qui compte parmi les
110 plus importantes des Etats du Sud, a été depuis l'origine dans les mains les plus honorables. Fort éprouvée par la guerre de sécession, ainsi que la plupart des enterprises situées dans le Sud, elle a depuis lors surmonte entièrement ses difficultes financieres, remis sa ligne en bon ordre, et ses efforts tendent maintenant a developper ses resources pour mettre son materiel au niveau de l'accroissement constant de son trafic.

L'emission actuelle ne constitue point une charge
111 nouvelle pour la Compagnie. C'est une simple operation financiere, advantageuse pour elle, et destinee a lui fournir les ressources necessaires au developpement croissant de son trafic.

En effet, cet Emprunt de Doll. 1,685,000 est emis en remboursement et en remplacement d'un montant egal d'avances, que l'Etat de Tennessee avait faites primitivement a la Compagnie pour aider a la construction de sa ligne. Comme tel, le dit Emprunt est substitute par la Loi a tous les droits de l'Etat
112 et, notamment, il est garanti par une premiere hypotheque sur les 118 miles de la route, situes dans les limites de l'Etat de Tennessee. Chaque Obligation porte a cet effet un certificat des autorites de l'Etat de Tennessee, constatant que l'Etat a bien ete rembourse integralement, que la dite Obligation est emise en lieu et place d'un montant egal, precedemment du a l'Etat, et qu'elle est garantie par

l'hypotheque qui existait en faveur de l'Etat, avant 113
le remboursement de ses avances.

MM. W.-B. Duncan, Shermann & C^e^), Adrien Iselin (de A. Iselin & C^e^) et R.-T. Wilson sont les Trustees (fidei-commissaires), charges d'exercer les droits que l'Etat de Tennessee a transmis aux detenteurs de ces Obligations. Ces droits permettent la prise de possession immediate du chemin, dans le cas du moindre delai dans le paiement des interets ou du capital, et ont ete exerces a plusieurs reprises, sans aucune contestation, contre d'autres 114
chemins de fer qui n'avaient pas paye les interets qu'ils devaient a l'Etat. Ces droits ont ete reconnus de la maniere la plus formelle, tant par la Compagnie Mobile et Ohio que par ses autres creanciers.

Ces Obligations forment une charge minime en capital, de Doll. 14,271 par mile, ou en interet, de Doll. 1,000 sur les 118 miles, de l'Etat de Tennessee. Or, le revenu moyen de la ligne entiere pour 1870 atteint Doll. 5,000, ou (deduction faite des frais a raison de 60%) Doll. 2,000 net par mille, soit le 115
double du montant reclame pour le service de la susdite dette. Il convient d' ajouter que les 118 miles, specialement affectes al a presente hypotheque, constituent la partie la plus productive de la route ; les recettes y afferentes sont donc plus fortes que la moyenne, et susceptibles, d'ailleurs, d'une augmentation considerable.

En resume, ces Obligations, reposant sur une ligne entierement achevee et en voie de prosperite ascendante, sont garanties par un gage exceptionnel et 116
par un revenu plus que suffisant qui tend a s'accroitre rapidement. Elles se recommandent de plus par la stipulation du capital et des interets payables en livres sterling, a Londres, a l'Union Bank.

New-York, Octobre, 1871.

A. ISELIN & C^ie^.

117 La souscription aux susdits Doll. 1,685,000, 7% or Mobile et Ohio, Obligations premiere hypotheque, est ouverte :

Les Lundi 13 et Mardi 14 Novembre prochain

a Francfort $^{s}/_{M}$: au Frankfurter Bankverein ;
a Berlin : au Berliner Bankverein ;
a Stuttgart : chez MM. Pflaum & C^{e} ;
a Breme : chez MM. J. Schultze & Wolde ;
a Munich : chez M. Jos. de Hirsch ;
118 a Bruxelles et Anvers : } a la succursale de la Banque de Credit et de Depot des Pays-Bas ;
a Bale : chez MM. de Speyr & C^{e} ;
a Geneve : chez MM. Lombard, Odier & C^{e} ;
)))))) A. Chenèviere & C^{e} ;
)) et a la succursale de la Banque de Crédit et de Depot des Pays-Bas.

Prix d'emission a Geneve pour l'Obligation, jouissance du 1er Juillet dernier, Fr. 4670, payables apres
119 la repartition at au plus hard le 30 Novembre courant, contre remise d'un recepisse provisoire.

Au cas ou les souscriptions depasseraient le montant offert, elles subiraient une reduction proportionelle.

La livraison des titres definitifs aura lieu le plus tot possible, probablement avant la fin de Decembre prochain.

120

RESPONDENTS EXHIBIT NO 5, W. H. D. L., N. P. 121

Translation.

7% First Mortgage Gold Loan of the Mobile & Ohio Railroad Company.

Issue $1,685,000, in 1685 bonds to bearer of $1,000 Gold or £ 205.

Interest 7% payable semi-annually 1st January 122
and July, at $35 gold, in New York, or £ 7, 3, 6, in London, at the Union Bank, at the option of the holder.

Principal reimbursable at par, either in $1,000 gold or £205, not later than 1901.

Commencing with 1873, the Company is obliged to set aside a sinking fund equal to 1% of the amount of the loan, which money is to be invested in buying bonds of this loan, as long as they can be had at 110 or under. In case they cannot be bought 123
at this limit, the amount to the credit of the sinking fund is to be invested in first class securities, the proceeds of which are to be applied to the payment of the loan, at maturity.

The Mobile & Ohio Railroad is 507 (English) miles long, entirely completed, commencing at Mobile, in the Gulf of Mexico, crossing the States of Alabama, Mississippi, Tennessee and Kentucky, and end- 124
ing at Columbus and Cairo, on the Mississippi, where it connects with the two important lines of the St. Louis & Iron Mountain and Illinois Central, thus forming a direct artery and almost straight line between the principal ports of the South, particularly New Orleans and Mobile, and the cities of the West, St. Louis and Chicago.

125 This Company already old and considered one of the most important in the Southern States has, since its origin, been under the control of most respectable parties. As with other enterprises in the South, the Company had a very hard time during the war of the rebellion ; since which it has satisfactorily arranged its financial difficulties, reconstructed its road, and is now endeavoring to develop its resources by improving the conditions of its equipment, so as to place it in a position to meet
126 the constantly increasing traffic offering.

The present issue is no new charge on the resources of the Company. It is simply an advantageous financial operation, the profit arising from which furnishing the Company with the means necessary to develop its increasing business. In fact this loan $1,685,000 is issued to reimburse and replace an equal amount of advances, which the State of Tennessee had originally made the Company to assist in the construction of the road.

127 As such, the said loan is substituted by law to all the rights the State had and is especially secured by a first mortgage on the 118 miles of road situated within the limits of the State of Tennessee. Each bond bears a certificate from the authorities of the State of Tennessee, stating that the State has been paid in full ; that the said bond is issued instead and place of an equal amount formerly due the State, and that it is secured by the mortgage which existed in favor of the State prior to the reimburse-
128 ment of its advances.

Mess. W. B. Duncan (of Duncan, Sherman & Co.), Adrian Iselin (of A. Iselin & Co.), and R. T. Wilson, are the trustees entrusted with exercising the rights which the State of Tennessee has transferred to the holders of the bonds. These rights permit the taking possession of the road, in the event of the slightest delay in the payment of the interest

or principal, and have several times been enforced, 129
without contest, against other roads, which had not paid the interest they owed the State. These rights have been acknowledged in the most formal manner, as well by the Mobile & Ohio Railroad Company, as by its other creditors.

These bonds constitute the small charge $14,271, principal, or $1,000 interest per mile on the 118 miles in the State of Tennessee.

The receipts of the whole road for 1870 were at the rate of $5,000 gross, or (deducting expenses at 130
the rate of 60%), $2,000 net per mile, viz: double the amount necessary for the payment of the interest on the above mentioned bonds. We can also add that the 118 miles which are covered by the present mortgage, are the most productive part of the property; the receipts on them being heavier than the average of the whole road and are susceptible of increasing considerably.

In short, these bonds issued on an entirely completed road of increasing prosperity, are secured by 131
a lien of exceptional value, and by an income more than sufficient, and which tends to increase rapidly. They can further be recommended on account of the stipulation that the principal and interest are payable in sterling, at the Union Bank of London.

New York, October, 1871.

Signed, A. ISELIN & CO.

132

Subscription to the above mentioned $1,685,000 7% Gold bonds of the Mobile & Ohio Railroad, will be received Monday and Tuesday next (November 13th and 14th).

At Frankfort on Me., at the Frankfewter Bankverein.

At Berlin, at the Berliner Bankverein.

133 At Stuttgart, with Mess. Pflaum & Co.
At Bremen, with Mess. Schultze & Wolde.
At Munich, with Jas. Von Hirsch, Esq.
At Brussells, and Antwerp, at the Branch office of the Bank of Paris and Pays Bas.
At Basel, with Mess Von Speyer & Co.
At Genevea, with Mess. Lombard, Odier & Co.
" " " " A. Cheneviere & Co.
" " at the branch office of the Bank of Paris and Pays Bas.

134 Price for a bond carrying interest from July 1st last frs. 4670, at Geneva, payable after the allottment, but not later than November 30, againust a provisional receipt.

In case the subscriptions exceed the amount of bonds offered, they will be reduced proportionately.

The delivery of the bonds themselves will be made as soon as possible, probably before the end of next December.

135 ———

RESPONDENT'S EXHIBIT, No. 6.
W. H. D. L., N. P.

December 31, 1870.

FINANCIAL.

SEVEN PER CENT. FIRST MORTGAGE BONDS

OF THE

136 NASHVILLE & DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile, on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

This mortgage was created for the sole purpose of 137
paying a debt due to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow to abide settlement of a claim of the United States; $300,000 have been purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence. 138

DREXEL, WINTHROP & CO.,
18 Wall Street.

NEW YORK GUARANTY AND INDEMNITY CO.,
52 Broadway and Exchange Court.

NASHVILLE & DECATUR RAILROAD CO.

FIRST MORTGAGE

139

Seven per cent. Sinking Fund Bonds,

Redeemable 1st July, 1900,

INTEREST PAYABLE 1ST JANUARY AND 1ST JULY IN THE CITY OF NEW YORK.

The Nashville & Decatur Railroad is 120 miles long, running in a direct line between Nashville and Decatur.

The country from Nashville to Decatur through 140
which the road passes, is the richest and most fertile part of Tennessee and Alabama, and it is doubtful if any road of similar length in the United States traverses a finer region.

The business of the road is at present almost exclusively local, but upon the completion of the South and North Alabama R. R., 110 miles of which

141 is already finished, it will become an important link in the most direct route from Louisville and other great cities of the Northwest to Montgomery, Mobile Pensacola and important points on the Gulf, and in the interior of Georgia and Alabama, and will derive from this source, a large additional business.

The security of the bonds now offered, does not, however, depend on any future increase of the business of the Nashville & Decatur R. R. Its receipts are already, under the present unfavorable condi-
142 tions, sufficient to secure beyond doubt the punctual payment of the interest on these bonds.

The mortgage is for $2,100,000, being $17,500 per mile, and has been created for the sole purpose of paying off the debt due the State of Tennessee, amounting to $2,702,997.10.

The proceeds of $1,900,000 of the bonds, now offered for sale, and other assets of the company on hand, will pay the entire State debt and leave its liabilities diminished by about $600,000, and with
143 $200,000 of its bonds on hand. These $200,000 of bonds are by special agreement placed in the hands of the New York Guaranty and Indemnity Co., in escrow until the suit now pending between the United States and the company is decided. The claim of the Government is for rolling stock sold to the company after the war, and now amounts, principal and interest, to $247,855.16. The company has a counter-claim for a much larger amount for material and rolling stock voluntarily delivered to the gov-
144 ernment during the war, and there seems to be no doubt that the claim of the government will not be admitted by the courts except as an offset.

The debt which the road owed to the State of Tennessee has been paid in full, as will appear by the annexed Statement of P. C. Calhoun, President of the Fourth National Bank, agent for the State Comptroller. On each bond there is a certificate,

signed by the Comptroller, stating that the debt 145
due by the Nashville and Decatur Railroad to the State of Tennessee has been paid in full, and that the bond is secured by a first mortgage, taking the place of the State lien. The bonds are further secured by a deed of trust, made by P. C. Calhoun, Richard T. Wilson and Adrian Iselin, which provides for a sinking fund of one per cent. per annum, to commence April 1st, 1873, the proceeds of which the company is obliged to invest in the purchase of the bonds as long as they can be obtained at 110 or 146
under.

The gross receipts of the road for the fiscal year ending Sept. 30th, 1869, were . .	$479,316 70
Expenses	271,383 36
Leaving the net earnings,	$207,933 34

Owing to the short crops and extraordinary expenses, the result of the business for the year end- 147
ing Sept. 30th, 1870, has been less favorable.

The gross receipts were .	$463,352 50
Expenses, ...	298,505 44
Leaving the net earnings, .	164,847 06

From present appearances the receipts for the current year will show a large increase, and after the completion of the South and North Alabama Railroad, it is confidently expected that they will 148
at least double.

J. W. SLOSS,
President Nashville & Decatur Railroad Co.

The undersigned offer the above bonds for sale on favorable terms, and after a thorough examination, believe the accompanying statement to be correct,

149 and can confidently recommend the bonds to investors as a first-class security.

DREXEL, WINTHROP & CO.,
18 Wall Street, New York.

NEW YORK GUARANTY & INDEMNITY Co.,
52 Broadway and Exchange Court, New York.

January, 1871.

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150 FOURTH NATIONAL BANK, City of New York, Agency of the Comptroller of the State of Tennessee.

NEW YORK, January 2d, 1871.

STATEMENT.

Debt of the Nashville & Decatur Railroad Company, as per statement, due State, January 1st, 1871, . . . $2,702,997 10

CREDIT.

151 I hereby acknowledge to have received from the Nashville and Decatur Railroad Company, the following number of bonds and coupons of the State of Tennessee, in liquidation of said debt due to the State, January 1st, 1871, viz.:

Twenty-three hundred and ninety-two 6% State bonds, of 1,000 each .	$2,392,000 00
Two 5% State bonds, $1,000 each .	2,000 00
One " " " .	1,750 00
Interest due on 5% State bonds, .	1,125 00
152 Ten thousand two hundred and four, past-due State coupons, of $30 each	306,120 00
Currency, ...	2 10
	2,702,997 10

(Signed),

P. C. CALHOUN,
President,
Agent of the Comptroller of the State of Tennessee.

RESPONDENT'S EXHIBIT, NO. 7. 153

W. H. D. L., N. P.

FINANCIAL.

EAST TENNESSEE

VIRGINIA AND GEORGIA RAILROAD 154

FIRST MORTGAGE 7 PER CENT. BONDS, REDEEMABLE 1900.

Interest payable 1st of January and 1st of July in the City of New York.

The mortgage is for $3,500,000, on a road 270 miles long, which has been in successful operation for many years. The lien is about $13,000 per mile, which makes it, with few exceptions, the smallest 155 issued on any road in the United States. It was created for the sole purpose of paying off the debt due the State of Tennessee, amounting to $4,117,-761.10.

An examination into this security will prove it to be one of the best ever offered to this market.

For terms and further particulars apply to

GALLATIN NATIONAL BANK,
No. 36 Wall Street,
Agent for the sale of the bonds. 156

EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD

FIRST MORTGAGE

SEVEN PER CENT. BONDS,

REDEEMABLE 1900,

Interest Payable 1st January and 1st July, in the City of New York.

The East Tennessee, Virginia & Georgia Railroad is 270 miles long; it commences at Bristol, on the boundary of Virginia, and runs to Chattanooga, with a branch from Cleveland to Dalton, Georgia, thirty miles long.

It forms a link to the shortest line which can be built from New York to New Orleans, and, from the conformation of the country through which it runs, must necessarily remain a Trunk Line, the importance of which will increase as fast as the numerous railroads now connected with it are completed.

The security of the Bonds now offered for sale does not, however, depend upon any future development of the business of the road. The earnings are already sufficiently large to establish the perfect safety of the Bonds, and to make them one of the best securities ever offered in our market.

The mortgage is for $3,500,000, being only $13,000 a mile, and has been created for the sole purpose of paying off the debt due to the State of Tennessee, amounting to $4,117,761.10. The road is entirely completed; the bridges burned during the war have all been rebuilt in the most substantial manner;

the surplus earnings are sufficient to re-lay the track with new iron, which is now being done rapidly, and to make the other improvements which the increasing business of the road requires, without incurring any new debt. It was solely for the purpose of realizing the profit which would result from the payment of the debt of the State of Tennessee that this mortgage was created. 161

The proceeds of $2,500,000 of the bonds, together with the money the Company had on hand, will pay the entire State debt, amounting to $4,117,761.10, and leaving the Company without any floating liability, its debt diminished by $671,761.10, and with one million of bonds on hand. Of these, $500,000 are by special agreement, not to be issued by the trustees of the mortgage until the suit now pending between the United States and the Company is decided. The claim of the Government is for rolling stock sold to the Company after the war, and now amounts to $560,000. The Company has a counter claim for a much larger amount for material and rolling stock voluntarily delivered to the Government at the outbreak of the war, and there seems to be no doubt that the claim of the Government will not be admitted by the Courts. Should it, however, be otherwise, the $500,000 of Reserved Bonds will be sufficient to pay claim without embarrassing the Company in any way. 162 63

Of the $2,500,000 which the Company proposed to sell, $1,400,000 have already been sold, mostly in Europe, where they would all have been absorbed, had it not been for the breaking out of the war; there remained, therefore, $1,100,000 to be sold, which are offered at 90 and interest. 164

The debt which the Road owed to the State has been paid in full, as will appear by the Statement

of the Comptroller, a copy of which appears annexed. On each bond there is a certificate, signed by the Comptroller, stating that the debt due by the East Tennessee, Virginia & Georgia Railroad of the State of Tennessee has been paid in full, and that the bond is secured by a first mortgage, taking the place of the State lien. The bonds are further secured by deed of trust, made to P. C. Calhoun, Adrian Iselin and Richard T. Wilson, which provides for a Sinking Fund of one per cent. per annum, to commence in 1872, the proceeds of which the Company is obliged to invest in the purchase of the bonds, as long as they can be obtained for 110 or under.

When the loans made for the purpose of paying off the State debt will have been liquidated by the sale of bonds, the financial condition of the Company will be as follows:

Interest on $2,500,000 First Mortgage Bonds	$175,000.00
" " 278,000 Endorsed 6 per Cent. Bonds	16,680.00
" " 811,000 Unsecured	58,660.00
Annual charge for interest	$240,340,00
The Gross Earning for the year ending July 1, 1870, were	$1,278,863.80
Deduct Operating Expenses	716,182.12
	$562,681.68

Being $322,341.68 in excess of all liabilities for interest and $387,681.68 in excess of interest on amount of First Mortgage Bonds issued.

These bonds are for sale by the GALLATIN NATIONAL BANK, 36 Wall Street, New York. 169

COMPTROLLER'S OFFICE,

NASHVILLE, August 11, 1870.

STATEMENT.

Debt of East Tennessee and Virginia Railroad Company, as per statement..	$3,835,000,00
Debt of East Tennessee and Georgia Railroad Company, as per statement..	1,553,890.40
TOTAL AMOUNT DUE STATE July 1, 1870..	$4,117,761.10

CREDIT.

I hereby acknowledge to have received from the East Tennessee and Virginia and East Tennessee and Georgia Railroad Companies, the following number of Bonds and Coupons of the State of Tennessee, in liquidation of said debt due the State July 1, 1870, viz.: 171

Three thousand eight hundred and thirty-five State bonds, of $1,000 each.	$3,835,000.00
Nine thousand four hundred and twenty-five past due coupons, of $30 each...	282,750.00
Currency Paid Fourth National Bank, New York.....	11.10
	$4,117,761.10

172

(Signed)

ED. R. PENNEBAKER,
Comptroller, &c.

[Seal of State of Tenessee.]

173 The above amounts represent the entire indebtedness of the Railroads above mentioned; and have been credited with such amounts in my office.

(Signed)

ED. R. PENNEBAKER,
Comptroller, &c.

174

175

176

Deposition of Thomas Denny.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the MEMPHIS & CHARLESTON R. R. Co.

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

1

2

Testimony and proofs for final hearing on the part of the respondents in the above-entitled suit, taken under and pursuant to the 67th Rule in Equity, as amended before William H. DeLancey, Special Examiner, duly appointed herein.

3

NEW YORK, March 8, 1880.

Present—MR. CHAS. H. TWEED, *for Respondents.*
MR. E. L. ANDREWS, *for Compl't's.*

THOMAS DENNY, a witness produced on the part of the respondents herein, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

4

(Deposition taken subject to all legal objections of both parties.)

5 *Direct-examination* by Mr. TWEED:

1 Q. Please state your name, age, residence and occupation?

A. Thomas Denny; aged 46; I reside in New York City, and am a banker and broker.

2 Q. Are you a member of New York Stock Exchange?

A. I am.

3 Q. How long have you been a member of the
6 Stock Exchange?

A. Since 1858 or '59.

4 Q. Were you before that time also employed as clerk in the same business?

A. I was.

5 Q. During the period of your membership of the N. Y. Stock Exchange and your clerkship anterior thereto, have you been familiar with the manner of conducting transactions on the Exchange in Tennessee Bonds?

7 A. Yes.

6 Q. Please state how such dealings were conducted before the war, and into what classes Tennessee State Bonds were then divided?

A. They were bought and sold by open call at the Stock Exchange, and the classes into which they were divided were Tennessee 5s and Tennessee 6s.

7 Q. How were the contracts made between members of the Exchange in regard to those bonds entered into, and how were they recorded?

8 A. Contracts were made by the members between themselves orally, and such as they desired were recorded by the secretary on his books kept for that special purpose.

8 Q. Did those contracts specify the object for which the bonds dealt in were issued, or the distinctive numbers of the bonds to be delivered under the contracts?

A. The contracts did not state the object or num- 9
bers, but simply to the class, whether 6s or 5s.

9 Q. So that a person purchasing Tennessee 5s or Tennessee 6s, at the Stock Exchange, would not, at the time of making the purchase, nor until delivery was made under the contract, know the distinctive numbers of the bonds which he was to receive thereunder?

A. He would only know until delivery that he was to receive so many thousand dollars of 6s or 5s, without any other distinctive circumstances. No 10
distinction was made on account of the objects for which bonds were issued by the State.

10 Q. What change has taken place since the war in the classification at the Stock Exchange of Tennessee State Bonds?

A. Since the war the Tennessee 6s have been divided into Tennessee "olds," being the bonds issued before the war; Tennessee "new," being the bonds issued since the war, and Tennessee "new series," being the bonds issued for funding purposes. 11

11 Q. In other respects has the manner of dealing in these bonds at the Stock Exchange continued the same to the present time.

A. It continues the same except that the secretary's record is dispensed with, and in time contracts, written contracts, are exchanged between the members.

12 Q. In the oral dealings or the written contracts between the members is there any specification of the objects for which the bonds dealt in were issued 12
by the State, or the distinctive numbers of the bonds to be delivered?

A. There is not.

13 Q. So that a broker does not know until delivery is actually made what bonds of the classes "Old," "New" and "New Series" he will receive under his contract?

13 A. He knows the class, but neither numbers nor object for which the bond was issued.

14 Q. Did you ever know or hear of any contracts being made in the Exchange for the purchase or sale of Tennessee State bonds bearing any particular distinctive numbers, or issued for any particular purpose?

A. No such contracts were ever made on the Exchange.

15 Q. What proportion of the Tennessee State
14 bonds which are bought and sold in New York are bought and sold in the New York Stock Exchange?

A. According to my knowledge they were almost exclusively bought and sold at the Stock Exchange.

16 Q. Did you ever hear of any Tennessee State bond being bought or sold in or out of the Stock Exchange as carrying a lien on any railroad in Tennessee to which the bond was loaned.

15 A. I never have.

17 Q. Have you dealt extensively in Tennessee State bonds since you have been a member of the Stock Exchange?

A. I have.

THOMAS DENNY,
30 Pine street,
New York.

Subscribed and sworn to before me,
this 8th day of March, 1880.
16

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly 17
appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proof of both parties in the above-entitled suit in the City of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, New York City, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined, and the deposition was reduced to 18
writing and read to the witness and by him subscribed in my presence.

Dated 8th March, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

19

20

Deposition of Jno. C. Brown.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.* on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the Memphis & Charleston Railroad Company

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

Deposition of JOHN C. BROWN, witness for defendants, taken in Nashville, Tennessee, April 23d, 1880, before L. W. Humes, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee.

Taken pursuant to agreement.

Present—W. Y. C. HUMES, for Defendants.

JNO. C. BROWN, being first duly sworn, deposed as follows:

In answer to oral interrogatories, he states:

My name is Jno. C. Brown; I have lived in the State of Tennessee all my life, and am now fifty-

one years of age; I am a lawyer by profession and practice, and my residence is Pulaski, Giles County, Tennessee. From early manhood to the commencement of the war, and then from the close of it up to 1871, I devoted myself almost exclusively to the practice of my profession. I was elected President of the convention that revised the constitution in 1870, and presided over its deliberations. I was the first Governor elected under the new State constitution of 1870, and was inaugurated in 1871, and re-elected and inaugurated in 1873 for a second term. During the years 1869 and 1870, I was thoroughly acquainted with the sentiment of the people of the State. The acts for the sale of the insolvent and defaulting railroads originated in and were produced by a prevalent sentiment throughout the State that such measures would subserve the best interests of the State in retiring a part of its bonded debt, and to the same extent benefit the holders of her bonds. The acts of February 25, 1869, and January 20th, 1870, enabling the solvent roads to retire their debts to the State, originated in and were produced by the same sentiment, and by a sentiment that it would benefit the roads in their depressed condition by enabling them to use the State's first lien on their property to purchase up and pay the State debt in her bonds.

I was intimately acquainted with Dempsey Weaver during the years 1869 and 1870, and my administration as Governor. He was the President of the Third National Bank, and was then and had been for years a leading financial man residing at Nashville. I had frequent conversations with him during the years 1869 and 1870. He was the agent and correspondent of a very large number of the bondholders of Tennessee; he favored and approved for them the acts above referred to, as they would reduce the State debt and thereby increase her ca-

pacity to pay them. The railroads also favored it as measures of relief to them in their broken down condition.

The constitutional convention of 1870 passed no measure discriminating between any State bonds, nor has the Legislature, except as to a few issued to the Mineral Home R. R. Co. During my two terms as Governor, I received an immense number of letters from holders of State bonds from New York, Philadelphia, Baltimore and other places, stating that now the State had reduced her debt, and asking when she was going to resume payment of her interest. The bonded debt of the State had been reduced by the sale of the insolvent roads, and by some of the solvent roads having retired their debts under the acts of 1869 and 1870. I did not preserve their correspondence, but I know the bondholders were clamorous during the whole of my administration for the payment of their interest, and stated the retiring the bonded debt under the acts of 1869 and 1870 as one of the reasons why the State should be the more able to pay their interest. Not one of them ever intimated a right to go upon the railroads, or that this legislation was a violation of their rights. In my second gubernatorial canvass I advocated the funding of the unpaid coupons, and my opponents agreed with me as to this measure. I know Mr. Weaver, as agent of the bondholders, warmly and cordially approved this measure, and many others did also. Immediately after my inauguration in 1873 I sent into the Legislature a message advocating the funding act of 1873, and in that message was given an accurate statement in figures of the amount of State bonds that had been retired by the sale of delinquent roads and settlements with solvent roads under the acts of 1869 and 1870, accompanied also with the Comptroller's report, showing the same facts in detail. Mr. Weaver and

other correspondents of foreign bondholders called at the capitol and got a vast number of these printed messages and forwarded them to the foreign bondholders. I felt it my duty to ascertain thoroughly and accurately whether the bondholders approved or disapproved this funding measure. They approved it almost universally if not entirely so; I never heard of a dissent. After the passage of the measure nearly all of the holders funded their overdue coupons, and registered their old bonds under this act. The sale of the delinquent roads and the purchase of State bands by the solvent roads to settle their debts was publish all over the country, as well as the sale of the substitution bonds of the companies. Never from 1869 to the close of my administration in 1875, did I hear of State bondholders claiming that the State bonds issued to railroads or their coupons were due to them from the companies to which issued or claiming the lien. No such lien was ever set up during my official connection with the State, not even after the panic and financial depression had made it evident that it would be with the utmost difficulty the State could pay her interest, if at all.

I believe at the time of the passage of the acts of 1869 and 1870, and still believe, that the making of the settlements therein provided tended in a great degree to place the State in a position to resume payment of interest upon its entire debt; and the act of 1873, under which the debt was funded and registered, was made likewise, under the confident expectation that the interest would be punctually paid. And this undoubtedly would have been the result but for the subsequent panic and paralysis of the industries of the country. In order to force the several railroads that had not settled under the acts of 1869 and 1870 to do so, I sent either a message or the form of a resolution to the Legislature, re-

quiring the roads te settle in a given time, or, in default, withdrawing the privilege.

And further saith not.

JNO. C. BROWN.

Subscribed and sworn to before me this, April 23, 1880.

L. W. HUMES,
Special Examiner.

I, L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee, to take the testimony on behalf of the defendants in the above entitled suit, in the State of Tennessee, do hereby certify that the foregoing deposition was taken before me as stated in the caption, and reduced to writing, and subscribed to by the witness in my presence.

Witness my hand, this April 23, 1880.

L. W. HUMES,
Special Examiner.

Deposition of James P. Wallace.

1

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston R. R. Co.,

2

against

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

Testimony and proofs for final hearing on the part of the Respondents, taken under and pursuant to the 67th Rule in Equity, as amended, before Willian H. DeLancey, Special Examiner, duly appointed herein. 3

NEW YORK, March 9th, 1880.

4

Present—Mr. CHAS. H. TWEED, *for Respd'ts;*
Mr. E. L. ANDREWS, *for Compl'ts.*

JAMES P. WALLACE, a witness produced on the part of the respondents herein, being first duly

5 cautioned and sworn in the above-entitled suit, to testify the truth, the whole truth and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct Examination by Mr. TWEED:

1 Q. Please state your name, age, residence and occupation?

6 A. James P. Wallace; aged 63; I reside in Brooklyn; I am President of the N. Y. Guaranty and Indemnity Co.

2 Q. How long have you been President of that Company?

A. Since 1870 I think, previous to that I was Vice-President from the organization in 1865.

3 Q. What was the general character of the business carried on by the Guaranty and Indemnity Co.?

7 A. Loaning money on securities and merchandise.

4 Q. In the course of the dealings of that Company did it lend money to large amounts upon Tennessee State bonds?

A. We did so to large amounts and at various times extending through almost all the period of business from 1865 to 1875, when we withdrew from the business of making any loans.

5 Q. In the course of the dealings of the Guarantee & Indemnity Co. in Tennessee State bonds

8 was any discrimination ever made based upon the objects for which the bonds were issued by the State, whether for railroads, banks, turnpikes, the Capitol, Hermitage or the Agricultural Bureau, or did you ever inquire as to which of these objects any bonds presented to you were issued for?

A. After we commenced business, finding that the Tennessee bonds offered to us were of various

classes, I went to the Bond Committee of the Stock Exchange and to the Secretary of that Committee for information as to what bonds were a good delivery at the Stock Exchange. The information I obtained led me to consider all the old bonds, bonds issued before the war which were not mutilated by endorsements written upon them, or otherwise mutilated, were a good delivery without respect to the objects for which they had been issued, on a sale of "Old Bonds," and that all Tennessee State bonds issued after the war were a good delivery on a sale of "New bonds" without respect to the object for which they had been issued. And in our receiving Tennessee State bonds as collateral for loans we acted under that information, and we made no discrimination or enquiry in respect to the object for which the bonds had been issued.

6 Q. You have spoken of "endorsements" written upon certain old State bonds ; please state the facts in respect to such endorsements.

A. The endorsements were to the effect that the bond was the property of some person or corporation. Something like a notice to the public that the bond belonged to some particular person. I understood these endorsed bonds were not a good delivery even if there was a subsequent endorsement to bearer, and we therefore rejected them.

7 Q. Did the Guaranty and Indemnity Company, in or about 1870, become the purchasers of any of the substitution bonds issued by the Nashville & Decatur R. R. Co?

A. In December, 1870, the New York Guaranty and Indemnity Company jointly with Drexel, Winthrop & Co., A. Iselin & Co., and R. T. Wilson & Co., agreed to purchase about $1,600,000 of such bonds, participating in the purchase to the extent of one fourth each, and on the 3d of May, 1871, we

13 received our share of such bonds, and paid for them.

8 Q. At the time that your company became purchasers of these bonds had you any knowledge of any claim of any holders of bonds issued by the State of Tennessee, and loaned to the Nashville & Decatur R. R. Co., or its predecessors, that they had any lien or claim upon the property of that company or its predecessors?

A. We had not.

14 9 Q. Did your company, in connection with Drexel, Winthrop & Co., issue the advertisement for the sale of these bonds now shown you?

A. Yes, we did. It is as follows, and it appeared in the leading papers in New York and in a Brooklyn paper, and also a circular:

December 31, 1870.

FINANCIAL.

SEVEN PER CENT. FIRST MORTGAGE BONDS

15 OF THE

NASHVILLE AND DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile, on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

This mortgage was created for the sole purpose of paying a debt due to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow
16 to abide settlement of a claim of the United States; $300,000 have been purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence.

DREXEL, WINTHROP & CO.,
18 Wall Street.
NEW YORK GUARANTY AND INDEMNITY CO.,
52 Broadway and Exchange Court.

10 Q. Was there endorsed upon those bonds a certificate of the Comptroller of the State of Tennessee in the form now shown to you? 17

A. Yes. This is the certificate:

"I certify that the Nashville & Decatur Rail-
"road Company has paid off the debt to the
"State of Tennessee, which was created by
"the loans of the bonds of said State, and
"for interest thereon, and that this bond is
"secured by a first mortgage, and is issued 18
"under authority of law, and takes the place
"of the lien which was held by the State.

"ED. R. PENNEBAKER,
"*Comptroller of the State of Tennessee.*
"By P. C. CALHOUN, *Prest. Agent.*"

11 Q. If the holders of any of the bonds of the State of Tennessee which had been loaned to the Nashville & Decatur R. R. Co., or its predecessors had asserted any lien or claim upon the property of 19
that company by virtue of those bonds, would you have made the purchase?

A. If we had known of any such claim, we certainly would not, nor would we have recommended them nor inserted the advertisement produced.

12 Q. Did any of the directors, or persons connected with your company become purchasers of any of those bonds?

A. Yes, sir. I took some myself, and I think Wm. A. Low, S. D. Babcock, Wm. Allen Butler 20
and Geo. W. Parson purchased some of them.

JAMES P. WALLACE.

Subscribed and sworn to before me
this 9th day of March, A.D. 1880.

WILLIAM H. DELANCEY,
Special Examiner

21 I, WILLIAM H. DELANCEY, special examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-en-
22 titled suit and examined, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence.

Dated March 9th, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

23

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Deposition of Joseph W. Drexel.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, et al., on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston R. R. Co., 1

vs.

THE MEMPHIS AND CHARLESTON R. R. Co. et al. 2

Testimony and proofs for final hearing on the part of the respondents in the above entitled suit, taken under and pursuant to the 67th Rule in Equity, as amended, before William H. De Lancey, Special Examiner, duly appointed herein. 3

52 Broadway,
NEW YORK, March 1st, 1880.

Deposition taken by consent of counsel in the above entitled suit before William H. De Lancey, Special Examiner.

(Deposition taken subject to all legal objections of both parties.)

4

Present—CHAS. H. TWEED,
Of Counsel for Defendants and Substitution Bondholders.

E. L. ANDREWS,
Of Counsel for Complainants.

5 JOSEPH W. DREXEL, a witness produced on the part of the respondents, being affirmed as a witness, testified as follows:

My name is Joseph W. Drexel; my age forty-nine; my residence New York City; no occupation; have retired from business.

1 Q. Before you retired from business, in what firms were you a partner?

A. In the firm of Drexel & Co., Phila., Drexel,
6 Winthrop & Co., of New York, until July, 1871, and of Drexel, Morgan & Co., and also Drexel, Harjes & Co., Paris; I retired from the firms of Drexel & Co., Drexel, Morgan & Co. and Drexel, Harjes & Co., Dec. 31, 1875.

2 Q. While you were a member of those firms, did they deal as bankers in the bonds of the State of Tennessee?

A. We dealt in bonds generally, and that, of course, included the bonds of Tennessee.

7 3 Q. Had your New York and Philadelphia firms representatives in the Stock Exchanges of those cities?

A. Yes.

4 Q. Were you familiar with the manner in which Tennessee bonds were dealt in on those Stock Exchanges?

A. Yes.

5 Q. Did you ever know or hear of any Tennessee bonds being bought or sold as carrying a lien
8 upon any railroad in the State of Tennessee to which they might have been loaned?

A. No.

6 Q. Did your firm of Drexel, Winthrop & Co. in or about 1870 become the purchasers of any of the substitution bonds issued by the Nashville and Decatur Railroad Company?

A. We became part purchasers to a large extent

in company with R. T. Wilson & Co., A. Iselin & 9
Co., and the New York Guaranty and Indemnity Company of the bonds issued by the Nashville and Decatur Railroad Company at that time. The whole amount of the loan was $2,100,000, and we bought about $1,900,000.

7 Q. At the time that your firm became part purchasers of those bonds had you any knowledge of any claim of any holders of bonds issued by the State of Tennessee and loaned to the Nashville and Decatur Railroad Company, or to its predecessors, 10
that they had any lien or claim upon the property of that Company or its predecessors?

A. No.

8 Q. Did your firm, in connection with the N. Y. Guaranty and Indemnity Co., issue the advertisement for the sale of those bonds now shown you?

A. Yes, sir, we did—a copy of which advertisement is as follows:

11

December 31, 1870.

FINANCIAL.

SEVEN PER CENT FIRST MORTGAGE BONDS

OF THE

NASHVILLE AND DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

12

This mortgage was created for the sole purpose of paying a debt due to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow to abide settlement of a claim of the United States; $300,000 have been purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence.

DREXEL, WINTHROP & CO.,
18 Wall Street.

NEW YORK GUARANTY AND INDEMNITY CO.,
52 Broadway and Exchange Court.

13 9 Q. If the holder of any of the bonds of the State of Tennessee which had been loaned to the Nashville and Decatur R. R. Co. or its predecessors had asserted any lien or claim upon the property of that Company by virtue of those bonds, would you have made the purchase?

A. No, sir.

10 Q. Would you have issued that advertisement and given the bonds the endorsement of your firm if you had known of such a lien or claim being as-
14 serted?

A. No, sir.

11 Q. Those bonds were sold by the interested firms, or by some of them, to the public, were they not?

A. Yes.

12 Q. You and the other parties sold them to the public as first mortgage bonds, secured upon the property of the Nashville and Decatur R. R. Co., as stated in the advertisement issued by your firm
15 and the N. Y. Guaranty and Indemnity Co., did you not?

A. Yes, sir.

13 Q. Did you afterwards become yourself a purchaser of any of the substitution bonds of the Memphis and Charleston R. R. Co. issued under the purchase of the State lien?

A. Personally I subsequently bought $50,000 of the first mortgage bonds of the Memphis & Charleston R. R. Co., each of which bonds bears an en-
16 dorsement to the effect that the lien previously held by the State of Tennessee against the road had been vested in trustees under an assignment from the State to be held as security for that issue of bonds.

14 Q. At what price did you buy those bonds and when?

A. To the best of my recollection at 90 to 95 and 17
subsequent to 1877.

15 Q. At the time of your purchase of those bonds had you any knowledge of any claim on the part of any holder of Tennessee State bonds loaned to that R. R. Co. or any other R. R. Co. in Tennessee that they had any lien or claim upon the property of that or any other R. R. Company by virtue of those bonds?

A. I say most emphatically, no; I would not have entertained the proposition for a moment if I 18
had known of any such claims.

16 Q. Are you still a holder of those Memphis and Charleston bonds?

A. I am.

Cross-examination by Mr. ANDREWS:

17 x Q. Where did you reside at the times mentioned in your direct examination?

A. For part of the time I resided in Philadelphia, 19
but during these transactions I was in New York the major part of business hours, and in the summer of 1871, I came to New York to reside permanently.

18 x Q. Did you purchase $1,600,000 of those substitution bonds without getting any legal advice as to their title?

A. I did not know them under the name of "substitution bonds," but we bought about that amount in connection with other parties of the first mort- 20
gage bonds of the Nashville & Decatur Railroad. We took all the precautions we usually did in buying bonds for ourselves, and had we felt the necessity of having any legal assistance we would have called it in. I do not recollect whether we felt any such necessity or not, or whether we took legal advice or not. In case we thought there was necessity for

21 legal advice, we handed it to our regular attorney. Mr. Robert Winthrop, of my firm, would be more likely to know than I.

19 x Q. Who brought these securities first to your notice.

A. Mr. R. T. Wilson, so far as I recollect.

20 x Q. Did you not have frequent conversations with Mr. Wilson on the subject of these securities?

A. I recollect talking with Mr. Wilson about them after the issue of the advertisement after I
22 came to New York. Mr. A. J. Drexel had more frequent conversations with Mr. Wilson previous to the purchase.

21 x Q. Did Mr. Wilson at any of the times mentioned in your direct examination exhibit to you the opinion of Judge Davies and Davis, to the effect that the Tennessee State bonds were paramount liens upon the railroads to which they were issued, or speak to you of that opinion in any way?

A. No, sir; he never did. He could not have de-
23 scribed them as first mortgage bonds had he done so.

22 x Q. Did you have any conversation with Mr. Iselin while the bonds were being sold?

A. Yes.

23 x Q. Did he exhibit or speak of that opinion to you?

A. No, sir; he did not.

24 x Q. Please produce a copy of any opinion which your firm received upon this subject?

24 A. I will if such a one ever existed, or is now in existence.

Re-direct:

25 Q. Did not Mr. Donaldson, as Chairman or Mr. Williams, as Secretary of the Committee of Tennessee bondholders or any Tennessee bondholders ever exhibit to you any such opinion of Davies and Davis, or any opinion to that effect. 25

A. No.

26 Q. If any claims on behalf of Tennessee State bondholders that their bonds constituted a paramount lien upon the property of the railroad company to which they were loaned had been communicated to your brother Anthony J. Drexel, or to your partner Mr. Winthrop, would they in the usual course of business have communicated that fact to you before the transaction was consummated? 26

A. Yes.

Re-Cross:

27 x Q. Could you not have obtained a printed copy of Davies and Davis' opinion had you sought for it? 27

A I neither knew then nor do I know now that such an opinion existed. I never heard of it till within a week

JOS. W. DREXEL.

Subscribed and affirmed before me this first day of March, A. D. 1880. 28

WILLIAM H DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the City of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the City of New York, by the counsel and witness aforesaid. That the said witness was duly affirmed and cautioned; in the above-entitled suit and examined, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence.

Dated March 1st, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

Deposition of Vernon K. Stevenson.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

against

MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

52 Broadway, August 12, 1879.

Hearing to take the deposition of VERNON K. STEVENSON, pursuant to notice.

Present—Mr. ANDREWS for Complainant.
Mr. HUMES for Defendant.

It is consented and agreed by both parties that the deposition of the witness, Vernon K. Stevens, shall be taken but once, and is to apply to each of the above-entitled actions, and be considered as testimony in each.

It is agreed by counsel that this deposition need be taken but once, and that it may be read as evidence in all the causes in which the Louisville & Nashville Railroad Company, either at Nashville or Memphis, is party.

VERNON K. STEVENSON, being first duly cautioned and sworn in each of the above entitled actions, deposes and says:

5 *Direct-examination* by MR. BAXTER, Defendant's Counsel:

Q. What is your name, age, residence and occupation?

A. My name is Vernon K. Stevenson; I was 67 years old the other day; I reside in the city of New York; I am President of the Real Estate Trust Company, and in some respects agent for railroads.

Q. Were you ever connected at any time with
6 any of the railroads of Tennessee; if so, with what railroad, when and in what capacity?

A. I was connected with the railroads of Tennessee. I was first Commissioner for the Nashville and Chattanooga Railroad under the charter. I was then first President of it, and continued so for 20 or 30 years. I was then President of the Winchester and Alabama Road, and so continued until its completion, when I resigned. I was then President of the Nashville and Northwestern Road, and
7 continued so until after the close of the war. I was President of all three at once, I think; that is, the succession, I came into the Presidency of them. I was President of the Nashville and Chattanooga Road from about 1844-5 to 1865, and I was President of the Northwestern Road. I don't recollect exactly the time I became President of the Winchester and Alabama Railroad. It was after the first organization had failed to build the road. It was broken down, and I took it up and finished it
8 in a couple of years, in connection as a branch of the Chattanooga Road, in connection with it and its interests. The Northwestern Road, I think, I took possession about 1858-9 as the President, but I don't recollect accurately the time. It had been under contract and broken down also. I took it up and finished it in connection with the Nashville and Chattanooga Road.

Q. Did you as president or as the officer of any 9
of said railroad companies receive any bonds from the State of Tennessee loaned to said companies by the State under the Internal Improvement Law of that State?

A. Yes, sir, I did.

Q. In the negotiating or disposing of said bonds did you sell them directly to purchasers or were they sold through bankers and brokers generally?

A. Well, I think those on the Winchester and Alabama Railroad were all sold through bankers 10
and brokers, perhaps some of them might have been delivered to parties we purchased iron of and foreign parties. My impression is that they were pretty much all disposed of through bankers or brokers, either by the company directly or through parties that they dealt with.

Q. In negotiating bonds were any representations made by the company or their authorized agents to the effect that the bonds were liens upon the roads in favor of the holders of the bonds? 11

(Objected to as immaterial).

A. Never that I knew of—never in any case. Straight bonds sold for more than the endorsed bonds; that fact had been tested by the sale of bonds with roads that I was connected with. The endorsed bonds by the State for railroads sold for less than straight bonds in all cases, and therefore parties selling bonds and parties buying bonds were each mutually anxious that no idea of 12
lien should be had on either side. There was a difference in price of one to two or three per cent. on all bonds endorsed by the State for the roads in the State and straight bonds issued by the State without any liens upon anything.

Q. Do I understand that bonds of the State of Tennessee which had been issued to pay for the

13 subscription of the State for stock in turnpikes, having no lien upon anything, sold for more than bonds of such railroad companies as the Nashville & Chattanooga Railroad and the East Tennessee & Georgia Railroad endorsed and guaranteed by the State?

A. I do; the difference was one to three per cent. never less than one, that I ever recollect of, and as high sometimes as three per cent. difference.

Q. In selling State bonds loaned to railroads in
14 the New York market, what endorsement or system of marking, if any, was resorted to by which the bonds could be known in the stock market as having been loaned to any particular company?

A. There was no such endorsement that I ever heard of; none on any of the bonds that I had anything to do with.

Q. What was the difference in price, if anything, between the straight bonds loaned to the railroads under the Internal Improvement Act of 1851-2, and
15 straight State bonds that had been issued to build the Capital, buy the Hermitage, and for other purely State purposes?

A. Not one particle; they all sold precisely the same. No question was ever asked until after the war, as to any bond issued by the State being more valuable than another bond issued by the State.

Q. What was the difference in price, if any, between State bonds issued to important and solvent roads and to those that were issued to unimportant
16 and insolvent roads?

A. There was not a particle of difference; and no difference in the price after the roads became insolvent even after the war. Nobody ever asked or cared whether the bonds were issued for the Nashville & Henderson Road or whether issued for the East Tennessee & Virginia or Memphis & Charleston Road, which was then one of the best railroads in the

State; nobody asked any questions and never 17
thought who they were issued to, or how they were issued.

Q. Was there any record or source of reference kept here in New York by which purchasers of Tennessee bonds could ascertain to what particular companies they had been issued?

A. Not that I ever heard of; never heard any questions asked. If you called Tennessee bonds, that's all you said, it's a Tennessee bond. There was no distinction that I ever heard of. 18

Q. When was the first information given to the public by which they were enabled to select out the bonds issued to particular railroads?

A. Well, I don't know of my own knowledge about that, I never heard of it until a few years ago.

Q. What is the difference now on the Stock Board in New York, between the price of Tennessee bonds loaned to railroads and those issued by the State for other purposes? 19

A. None that I know of; I don't know a particle of difference.

Q. What is the difference in price now between bonds of the State loaned to solvent and important roads and those loaned to insolvent and unimportant roads?

A. None at all that I know of; I don't think the question is asked in dealing in them even to-day, at least I have not known of its being asked as to what roads the bonds are issued to. 20

Q. Were the bonds loaned to different railroad companies generally disposed off as soon as issued, were they in some instances held for greater or less periods of time by the companies?

A. Well, all the strong roads held their bonds; they earned them before they got them, and they paid what the State required to be paid before they

21 got them, and disposed of them generally as necessity required future payments to be met, and generally held some all the time. One company I was connected with held its bonds and held over bonds when the road was finished. When I resigned as President I turned over the bonds to the Board that was left over, with the North-Western Railroad Company that I was building, and it ought to have been pretty hard pressed, as we took it broken down, and yet we always had more or less bonds on
22 hand. From the time of receiving until the next time of receiving we almost always had bonds on hand, sometimes a good many.

Q. Between the time that a company would receive bonds from the State and the time that it would negotiate these bonds to outside parties, was the interest paid by the company to the State or not?

A. Yes, always.

Q. What was the price of Tennessee State bonds
23 when the Internal Improvement Act of February, 1852, was passed. Were they at or above or below par, and how much?

A. I don't recollect accurately; my impression, generally, is that the bonds were never below par during the building of the road except, perhaps, in the Panic for a very few weeks. They were always about par, or a little above. Certainly that was so about 1852, and from that to 1854, 1856, and 1858. Perhaps 1857 is the time I said there was a panic,
24 and the bonds might have been for a little while below par, but I don't think they continued so long.

Q. When railroad companies would receive bonds from the State under that law, would they keep any list or memorandum of the numbers of the bonds received by them so as to identify them and keep trace of them?

A. No; not for that purpose, but whenever any 25
were shipped I always had the numbers taken until I knew when they were received so as to identify them in case they were stolen or lost on the way.

Q. I mean by my last question was any such record kept with a view of being able to trace the numbers of the bonds so as to know what bonds to pay off?

A. No, sir; you paid in any that you had; you paid in just as you chose; bonds and coupons were indiscriminately paid in; they would be paid 26
in without regard to whether they belonged to bonds issued to them, or any other bonds, unless it was endorsed bonds. We always paid identical endorsed coupons and we paid identical endorsed bonds in redeeming them, because our immediate liability was on them, but the other bonds we never took any charge of, because we did not consider there was any lien on them; we never undertook to pay the particular bond issued to us, but whenever it came to paying endorsed bonds, they were very 27
careful to take up bonds that were endorsed for them, and so with the coupons, that is they paid the coupons that the State endorsed for them.

Q. When railroad companies of Tennessee would pay the interest, which they had agreed to pay, to whom did they pay it?

A. They paid it to the State.

Q. Through whom?

A, To the Bank of Tennessee. It was a State bank, belonging to the State, and its business was 28
geaerally done through that bank. The Bank of Tennessee was always the fiscal agent of the State of Tennessee.

Q. When a railroad company would pay in a given amount of money to the Bank of Tennessee for interest, would it designate to the bank the particular bonds or coupons upon which that money

29 was to be paid, or did it just pay in so much money on account of interest due from the company to the State?

A. Well, the companies knew always what they had to pay, and sometimes they would go and pay it. Say the company owes this to the State for interest on the bonds issued to it; sometimes they would pay in part to the State and the State would let it run a little, but we would pay it all in from time to time, but it was never paid on any particu-
30 lar bond; it was paid as so much interest due the State.

Q. Who paid out this money and took up the coupons of the State?

A. The Bank of Tennessee. I suppose the money was paid into that bank, who kept the coupons as vouchers to show that they had been paid.

Q. Did any railroad company with which you had any connection, or any other company with whose course of business you were acquainted, have
31 any agent either at Nashville, New York or Philadelphia to pay the interest on straight State Bonds, that had been loaned to them?

A. No, sir, never.

Q. Did any bondholder of Tennessee ever present to any railroad company, so far as you know, any coupons of the State Bonds loaned to such company and ask payment thereof from such company?

A. Never that I heard of.

Q. These coupons which had been paid and taken
32 up by the State; were they kept by the State or returned to the companies?

A. I don't recollect of any being returned to the companies.

Q. Are you acquainted with the circumstances that led to the change in the Internal Improvement system of Tennessee from endorsing bonds of the companies by the State to loaning bonds of the

State to the companies? Please state fully all connection you had with the change of the system, if any; and state if you know what were the motives and reasons which induced such change? 33

A. It was brought about on the part of the railroad companies to have straight bonds because they sold for more, and the State did not care whether they endorsed or issued straight bonds, they expected to be responsible in either case, and, as at that time they did not issue any more than they were well secured in, it made no difference to the members 34 of the Legislature which they voted for.

Q. Where were you living in 1869 and 1870?

A. In New York.

Q, What business were you engaged in then?

A. I think I was in the real estate business—real estate agent here. I went into business here to start my son. He was anxious to go into law or merchandizing and he did not care which. I continued in business with him four or five years, until 1871 or 1872, when I withdrew from his business, 35 and he is carrying it on now.

Q. Was the fact known in New York in 1869 and 1870, that the railroad companies of Tennessee were paying off their debts to the State by issuing company's bonds and using the proceeds to buy up bonds of the State to retire their debts?

A. It was very publicly done. The bonds taken for that purpose bought and talked about all the time, swapping, exchanging, twisting to get the bonds to pay it it was a very notorious matter here, 36 as much so as anything, because there was so much of it; I have no doubt every bondholder was applied to more than once and the explanation made what they wanted with the bonds.

Q. Was the fact known in New York in 1870 and 1871 that the State of Tennessee had filed a bill at Nashville, claiming that the lien belonged to the

37 State, and asking to sell such a delinquent railroad as had been unable to buy up bonds of the State enough to pay off their debts?

A. It was a matter generally understood among bondholders, and it was thought by them that the bonds would be so benefited by taking so much off the market.

Q. What proportion of the entire bonded debt of Tennessee is held in New York, do you suppose?

A. Four-fifths, probably; I should think here
38 and in European agencies, but I don't know accurately.

Q. Did you ever hear any holder of Tennessee bonds complain of the action of the State and of the companies in retiring their debts, or selling out their railroads until the litigation in this case?

A. No, sir; never.

(This entire examination is taken subject to legal objection, and complainant's counsel
39 moves to strike out all the answers based upon hearsay, and not upon personal knowledge, and each and every of them.)

Cross-examination by MR. ANDREWS, complainant's counsel, begun:

1 x Q. Now, Mr. Stevenson, you state that you are an agent for the railroads in this city. Will you please state what railroads you are agent for?

40 A. The Nashville & Chattanooga road and its branches.

2 x Q. Are you a holder of any of the securities of the Nashville & Chattanooga road?

A. I hold some few of the securities, but not many.

3 x Q. Do you own securities on any other Tennessee railroads?

A. No, sir.

4 x Q. Are you a holder of Nashville & Chatta- 41
nooga securities, and to what amount?

A. I hold very little of it.

5 x Q. How much of the stock?

A. Well, I hold quite a large amount of stock of the Nashville & Chattanooga and St. Louis.

6 x Q. That is one of the roads against which bills are pending by Tennessee bondholders for the enforcement of their statutory liens, is it not?

A. Yes, sir.

7 x Q. During the time you were an officer of the 42
Tennessee railroads did you ever have occasion to give a receipt to the State of Tennessee or its officers for bonds of the State received by your companies?

A. I think I have.

8 x Q. Do you know whether or not, as a matter of fact, those receipts given by you did not specify the numbers of the bonds received by your companies?

A. I don't recollect; I think it very likely, but I don't recollect. 43

9 x Q. I understand you that the companies over which you presided I think you were President?

A. Yes, sir.

10 x Q. Did you not keep a record of the numbers and descriptions of the Tennessee bonds received by them?

A. I don't recollect that they did; I may possibly be mistaken in that; their books will show more correctly.

11 x Q. You are not sure they did not keep such 44
a record?

A. No, I am not sure whether they kept a record or not; they kept a record when they shipped the bonds.

12 x Q. I understand that you personally participated in the negotiations by which your Companies disposed of Tennessee bonds to the first

takers. I think that is a correct statement of your testimony?

A. In some cases, not generally.

13 x Q. Now in those cases in which you did personally participate in negotiating, I understand you that it was desired by the purchasers of those bonds that there should be no lien to protect those securities?

A. No, I have not said that at all.

14 x Q. I give your exact words?

A. I stated that it was mutually desirable by the parties, and gave as the reason that the bonds sold for less.

15 x Q. Did you ever receive any indication from any purchaser of Tennessee bonds that he did not wish to have a lien to secure the bond that he was about to purchase?

A. I don't think I ever heard the question to come up in any shape except when the bonds were being gotten up because nobody ever asked for a lien. When bonds were being gotten up the straight bonds issued to the roads would bring more, and as that was a matter which would meet the wishes of the buyer I presume they would have the same feeling as the seller, as they sold for more.

16 x Q. Did the straight bonds issued by the State of Tennessee, prior to the General Internal Improvement law of 11th February, 1852, sell above par or at par. I mean all of them; and was the credit of the State of Tennessee at that time entire unimpeachable and unimpeached?

A. I don't recollect of their ever having sold under par. I don't think they sold for less than par, and if they did it was for a very short time and for a very small amount.

18 x Q. How did the State credit of Tennessee stand then?

A. I don't think any State stood better than Tennessee.

19 x Q. Did the straight bonds of the State of 49
Tennessee, issued prior to the year 1851, and so in the year 1850, and during a part of 1851, until the fall or winter, did they not sell at a better price and command a higher credit than the State bonds issued after the Internal Improvement Law was passed?

A. I think not; if there was any difference it was a very slight difference and was not regarded; it had no effect at all.

20 x Q. Then I understand you that the State 50
bonds issued after the General Internal Improvement Law sold for a better price than those immediately preceding its passage?

A. I don't think it had any effect. The general impression here was that the State was secured and therefore the large volume of bonds issued did not affect its credit.

21 x Q. What is the lowest price you think Tennessee bonds sold at; I refer to the years 1850-'51,

A. I do not recollect the bonds selling below par, 51
but not having very much connection I may be at fault in the matter. After the bonds were issued I had connection and I think I recollect pretty accurately.

22 x Q. Now you were an officer of these railroads, Mr. Stevenson; how many Tennessee bonds could be floated—were floated at par before the passage of the act of February 11th, 1852, during 1850 and 1851, easily and without difficulty?

A. You can tell if the State was giving away 52
bonds there would be many afloat, but if the State were issuing bonds where it was secured, as the early bonds were secured and all well secured, they could be issued without impairing its credit, and it was the knowledge of that fact that prevented the impairing its credit.

23 x Q. Did you know, or ever hear, or ever read,

53 that the act of the Tennessee Legislature passed on the 11th February, 1852, under which I understand that your companies received bonds, contained these words: "That so soon as the bonds of the "State shall have been issued for the first section "of the road as aforesaid, they shall constitute a "lien upon said section so prepared as aforesaid "* * * and the State of Tennessee upon the is-"suance of said bonds, and by virtue of the same "shall be invested with said lien or mortgage
54 "without a deed from the company for the payment "of said company of said bonds with the interest "thereon as the same becomes due."

A. I had a great deal to do with the getting up of that law, and was by when every word was scanned, talked and reckoned about. Mr. Frank Fogg wrote it. He was a brother to my brother-in-law; and I stumped the State to get it passed; we could not get it passed before, and I went to the counties where the opposition was and spoke
55 against the politicians and passed that law.

24 x Q. Did you ever hear of an Act passed at the same session of the legislature, about three weeks and a half before the passage of this general law by which the issue of State bonds to the East Tennessee and Virginia Railroad for building the bridges was authorized?

A. I had very little to do with that; I believe that there was such an act passed for one road.

25 x Q. Do you know what model was taken for
56 drafting this General Improvement Law?

A. We took the the model from the earliest roads in South Carolina in getting up our charter.

26 x Q. Now, as you have read the passage I have just quoted from that law, how could you state in your direct examination that the bonds were never considered, if I am correct in quoting you, liens upon these roads?

A. In drawing up that act it was solely intended 57
to secure the State, and the law was made as distinctive as possible in that direction to secure the State only.

27 x Q. What did they mean, then, that the bonds should constitute liens?

A. Very well; the State issued bonds, and the State was liable for the bonds.

28 x Q. Did the Bank of Tennessee ever lend any of the companies with which you were connected, moneys to pay their interest with on these bonds? 58

A. I don't recollect that they did; they may have done so, but I don't recollect; I was director in the Union Bank from the time it broke down in 1837 until the war; my business was generally done there, and any borrowing was done at the Union Bank; but we did not do much.

29 x Q. Did the State bonds your railroad received contain any reference to any legislation of the State of Tennessee under which they were issued? 59

A. I don't recollect, sir; not accurately to speak of, because it is a matter I had not charged my mind with.

30 x Q. You state that the Tennessee bondholders made no objection to the act of the Legislature of 1869–70; do you not know that a committee of Tennessee bondholders about that time obtained the opinion of the late Chief Justice of the State of New York, and of another eminent lawyer in this city, to the effect that that legislation of Ten- 60
nessee impaired their interests in the liens on the railroads?

A. No, sir. I knew nothing of it at all. A great many bondholders came here, and I was asked to the meetings about that time and afterwards. They were the large bondholders.

31 x Q. Do you not know that that opinion was printed, and publicly and widely circulated?

61 A. No, sir. Never saw it. I don't think I ever heard of it even. It may have been done, but I never heard of it before.

32 x Q. You mention that there was a great deal of buying and changing and operating, or words to that effect, in Tennessee State bonds, or by third parties under these substitution laws. Were you interested in railroads at that time?

A. Yes, sir. I was interested in the Nashville and Chattanooga and St. Louis Railroad. I held
62 stock in it for thirty years.

33 x Q. You are not an officer now?

A. No, sir.

34 x Q. Were you consulted in reference to the purchases of bonds by any of these companies?

A. Yes, sir.

35 x Q. What companies?

A. The Chattanooga road had to purchase bonds to pay for the Northwestern road, and that led me in contact with buyers of other roads in Tennessee.

63 36 x Q. I suppose it was your object, and that of your coadjutor, to purchase Tennessee bonds at as low a price as possible, for the purpose of this substitution?

A. Well, I don't understand exactly your meaning. We gave the market prices and never made an attempt to interfere directly or indirectly. I think our company paid as high an average as 70% on the dollar for bonds they bought for the Northwestern Railroad.

64 37 x Q. Is that positively true of other railroad companies who obtained State bonds at that time?

A. I can speak for none but my own company. We paid the market prices; never, in any case, did we undertake to put bonds down; and the whole history of the Nashville & Chattanooga Road is that of integrity and honesty and principle from the bottom to the top in everything.

Adjourned to August 13th, at 11 A. M.

AUGUST 13th, 11 A. M. 65

Adjourned to August 18th, 1879, 12 M.

AUGUST 18th, 1879, 12 M.

Cross-examination closed.

Re-direct examination by W. Y. C. HUMES, Esq.

The witness deposed as follows:

During the whole time of my connection with the Nashville & Chattanooga Railroad Company, 66
Northwestern Railroad Company and Winchester and Alabama Railroad Company, I was a resident citizen of Tennessee, and gave my entire time to the business of those roads; I did make all important contracts and payments for them and managed their finances—I received, and controlled and disposed of the State bonds issued to said railroads; those bonds were not generally sold by me personally to purchasers, but were forwarded by me to bankers and brokers in New York, for sale. 67

V. K. STEVENSON.

Subscribed and sworn to before me, this 18th day of August, 1879.

WILLIAM H. DELANCEY,
Notary Public.
Westchester County, acting in New York County under and by virtue of 68
chapter 807, of the Laws of 1873, of the State of New York.

Deposition of B. O. White.

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

1

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee issued to the MEMPHIS & CHARLESTON R. R. Co.,

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

2

Testimony and proofs for final hearing taken on the part of the respondents in the above-entitled suit, under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein.

3

NEW YORK, March 2, 1880.

Present—Mr. TWEED, for respondents.
Mr. ANDREWS, for complainants.

(Deposition taken subject to all legal objections of both parties.)

B. O. WHITE, a witness produced on the part of the respondents, being duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

4

1 Q. What is your name, residence, occupation and age?

A. B. O. White; I reside on Staten Island; am Secretary of the N. Y. Stock Exchange, and am of full age.

2 Q. Are you a member of the N. Y. Stock Exchange, and how long have you been so?

A. I am and have been for a quarter of a century.

3 Q. Are you familiar with the method of buying and selling State bonds on the Exchange, and how long have you been so familiar?

A. I am and have been ever since I was a member, and also before, while I was a clerk with bankers in the street as far back as 1849.

4 Q. State if you know how Tennessee State bonds were bought and sold on the Exchange and in the New York market?

A. They are sold as "Old Tennessees," "New Tennessees," and "New Series." Before the war they were sold as "Tennessee 6's" and "Tennessee 5's." I never heard of their being sold in any other way.

5 Q. Was any Tennessee six per cent. bond or Tennessee five per cent. bond a good delivery for purchases made in the regular way on the New York Stock Exchange of either class of these bonds from 1852 to the outbreak of the war?

A. All I can say is the same as the answer to the last question.

6 Q. When Tennessee State bonds are bought at the New York Stock Exchange can the purchaser know for what purpose the bonds he is purchasing were issued, whether to railroads or for building the Capitol, or for the Bank of Tennessee, or for turnpikes, or for any other purpose?

A. He cannot as called and dealt in in the market.

B. O. WHITE.

Subscribed and sworn to before me, this 10th day of March, A. D. 1880. }

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed I was attended at my office, No. 52 Broadway, New York City, by the counsel and witnesses aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence.

Dated March 10th, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

Deposition of General R. P. Neely.

IN THE UNITED STATES CIRCUIT COURT, 1

FOR WESTERN DISTRICT OF TENNESSEE,

AT MEMPHIS, TENNESSEE.

CALVIN AMORY STEVENS, for himself and others,

versus

No. 317.

THE CHICAGO, ST. LOUIS AND NEW ORLEANS RAILROAD COMPANY *et als.* 2

The deposition of General R. P. NEELY, taken before me under an agreement of counsel, and in the presence of James Fentress, counsel for defendants.

Said witness, being called by defendants, was duly sworn by me to speak the truth, the whole truth, and nothing but the truth; whereupon he deposes and says as follows: 3

1 Q. State your age and residence.

A. My age is seventy-one, and my residence Bolivar, Tennessee.

2 Q. How long have you resided in Tennessee? State also whether you have been an active participant in the politics and policy of Tennessee, and, if so, for how long? 4

A. I have resided in the State of Tennessee all my life, and have been an active participant pretty much since I have been twenty-one years old.

5 3 Q. Were you ever a member of the legislature of Tennessee? If so, when? State also whether you have generally been in Nashville when Tennessee legislatures were in session? If so, for how long a series of years?

A. I was a member of the lower house of legislature at session of 1839–40. Have been in Nashville, and about the capitol, very often during the sessions of the legislature since that time, particularly since 1852–3.

6 4 Q. Were you one of the Commissioners of Internal Improvements of Tennessee at any time? If so, when? State also what particular fund you had charge of as such.

A. I was one of the Commissioners under the Act of 1842 to take charge of the fund appropriated by the State at that session to improve the navigation of rivers in West Tennessee, and continued connected with the internal improvement system for several years.

7 5 Q. State if you know when the internal improvement system in Tennessee began; giving a short statement of the different plans, and the *practical* difficulties which the State found in each, and why each plan was retained or abandoned.

A. There have been four plans adopted at different times by the State to carry out her internal improvements system by that of 1829, 1835, 1847–8 and 1851–2. The practical difficulties under the system of 1829 were many—among them the jealousy
8 of different portions of the State towards each other—claiming that the Commissioners for the State at large did not distribute the funds fairly, etc. This was attempted to be revised at the session of 1831, I think, by requiring that an equal number of Commissioners should be appointed from each grand division of the State, and afterwards certain counties were authorized to elect or appoint their own

Commissioners. But this system was found im- 9
practicable, and in 1835 the State tried the plan of taking one-third of the stock in internal improvement companies, and issuing her bonds for the portion of the stock in said companies. This plan was amended in several respects as defects became apparent in its practical execution; and the State, finding that the partnership with stockholders was unsatisfactory, and for other reasons, abandoned this plan, and in about 1848 adopted a new plan by which the State endorsed the mortgaged bonds of 10
certain internal improvement companies instead of issuing her own bonds. This plan did not work satisfactorily and was also abandoned, among other reasons because mortgaged bonds endorsed by the State could not be sold for par, while the bonds of the State were worth par or over. The act of 1852 adopted still another plan, which is set forth in the acts of that year and has since, with its amendments, continued in force.

6 Q. Did you ever hear, prior to the bringing of 11
this suit, that any holder of Tennessee bonds claimed that such bonds, or any of them, was secured by a lien on any railroad?

A. I never did.

7 Q. Did you ever know the firm of C. Powell, Green & Co. of New York, and have any transactions with them?

A. I know C. Powell, Green & Co. of New York, and had some transactions with them.

8 Q. What business did you have with them? 12
Was it your own private business? If not, whom did you represent?

A. It was not my private business. I was representing the Mississippi Central Railroad Company. I was attempting to secure some Tennessee bonds which had been placed in their hands as collaterals.

13 9 Q. Do you know the numbers of the Tennessee bonds which had been placed in the hands of C. Powell, Green & Co. as collaterals?

A. I do not.

10 Q. Who had placed these Tennessee bonds in the hands of C. Powell, Green & Co. as collaterals?

A. The Mississippi Central Railroad Company.

11 Q. State from whom the Mississippi Central Railroad Company got said bonds, if you know?

A. The Mississippi Central Railroad Company
14 got the bonds from the State of Tennessee under the Internal Improvement laws of the State.

12 Q. At what price were they hypothecated with C. Powell, Green & Co., and for what purpose?

A. I understand the purpose was that they were hypothecated for the purpose of borrowing money on same to pay interest on mortgage bonded debt and other, and that the Company was at liberty to draw to amount of fifty cents on the dollar.

15 13 Q. What became of these Tennessee bonds, were they or their proceeds used as required by the Internal Improvement Acts aforesaid?

A. C. Powell, Green & Co. disposed of said bonds in violation of the pledge and without the consent of the Company, and I was sent to New York by the Company and was endeavoring to secure for the Company their rights; I had the services of a detective and attorney, and was about to proceed to have the parties arrested for fraudulent breach of
16 trust when the president of the Company came to the city, and after investigation, found that C. Powell, Green & Co. were utterly insolvent. He took a conveyance of some wild lands in Arkansas and other property which turned out to be worthless.

14 Q. If I understand you, the Mississippi Central Railroad Company never obtained the Tennessee

bonds from C. Powell, Green & Co., and nothing of 17
value in their stead?

A. The Company never received anything of value from C. Powell, Green & Co., to my knowledge.

15 Q. What was the amount of these Tennessee bonds which you say were issued by the State of Tennessee to the Mississippi Central Railroad, and which C. Powell, Green & Co. disposed of in violation of the pledge?

A. I do not now remember the precise amount of said bonds, but believe it was about four hundred 18
thousand.

16 Q. Were any of the other bonds issued by the State of Tennessee to the Mississippi Central Railroad Company or to the Mississippi Central and Tennessee Railroad Company hypothecated or placed as collateral in the hands of H. S. McComb, of Wilmington, Delaware; if so, how many, and what for?

A. I believe that the Mississippi Central Railroad Company had in the hands of H. S. McComb one 19
hundred and fifty thousand dollars ($150,000) of such bonds; I knew, in 1867, the exact amount, and my recollection is that it was one hundred and fifty thousand, placed with him as collateral to secure future advances.

17 Q. Did the Mississippi Central Railroad Company ever get said bonds back from H. S. McComb, or apply them as required by the internal improvement laws of Tennessee?

A. They did not. 20

19 Q. Did the Mississippi Central Railroad Company pay H. S. McComb back all it owed him for advances on said Tennessee bonds; if yea, state how you know?

A. The Mississippi Railroad Company did pay back to H. S. McComb all it owed him and raised the means by the lease of its road; I know this be-

21 cause I was the Secretary and Treasurer of said Company after the lease, and was a Director of the Company previously.

20 Q. Are you the R. P. Neely who was appointed by the Governor of Tennessee Receiver of the Mississippi Central Railroad; if yea, when did you take possession as State's Receiver of said Railroad, and how long did you hold it as such?

A. I am the R. P. Neely who was Receiver of the Mississippi Central Railroad, and was appointed by
22 the Governor of Tennessee on 25th day of February, 1876, as shown by my commission; entered upon my duties on 27th of February, 1876, and remained in possession of said road in Tennessee until 28th November, 1877, when the Tennessee debt was settled and paid.

21 Q. What was the gross amount collected by you as State's Receiver of said railroad during your Receivership? State also the amount, if any, which you as such Receiver paid over to the State?

23 A. I paid over to the State of Tennessee while Receiver, the sum of one hundred and ten thousand dollars; the gross amount collected as revenue was eight hundred and two thousand two hundred and forty-one dollars and fifty-two cents ($802,241.52).

22 Q. How did you operate that part of said road in Tennessee—as a local road or as a part of the line from Cairo to New Orleans?

A. I operated the road as a local road, and run it to make the most out of it I could for the State of
24 Tennessee.

23 Q. Was there any effort by those in interest to relieve that part of their road in Tennessee of the Tennessee Receivership by paying the interest claimed by the State?

A. There was; but the Governor stated to them that he wanted the whole debt settled, and that he would not give them the possession of the road un-

til the whole debt was paid; that the State would 25
receive any of her outstanding bonds in payment of the debt.

24 Q. Was this representation made by the State authorities to those expecting to purchase the Mississippi Central Railroad at foreclosure sale before their purchase?

A. It was.

25 Q. Do you know whether the purchasers acted on these representations? If so, state how you know it? 26

A. They did, and directly after their purchase executed a mortgage on said railroad, which on its face provides for the settlement of said debt; I also had conversations with some of the purchasers before they purchased, and know that they bid at the sale of the said railroad expecting to settle said debt in State bonds which were then at a discount; the road was sold subject to the debt due the State of Tennessee.

26 Q. To what mortgage do you refer? 27

A. Mortgage made by the Chicago, St. Louis and New Orleans Railroad Company on the 8th day of November, 1877.

And further this deponent sayeth not.

(Sd.) R. P. NEELY.

STATE OF TENNESSEE, } 28
Hardeman County. }

I, W. C. DORION, Clerk of the County Court, do hereby certify that the foregoing deposition of Genl. R. P. Neely, of nine pages, was taken by me as stated in the caption, and that said witness wrote his own answers, and made oath in due form of law that said deposition was true.

In witness whereof I have hereto set my hand and official seal, this the 27th day of March, 1880.

(Sd.) W. C. DORION.

[L.S.] *Clerk of the County Court of Hardeman County, Tennessee.*

Deposition of Calvin Amory Stevens.

U. S. CIRCUIT COURT, 1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MOBILE & OHIO RAILROAD COMPANY, *v.* THE MOBILE & OHIO R. R. Co. *et al.*	No. 319.
THE SAME, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the MISSISSIPPI & TENNESSEE R. R. COMPANY, *v.* THE MISSISSIPPI & TENNESSEE R. R. COMPANY.	No. 318.

2

3

Before WILLIAM H. DELANCEY, *Notary Public.*

52 BROADWAY,
New York, February 13, 1880. 4

Present—Mr. E. L. ANDREWS, for Complainant.
Mr. WRIGHT, for Respondents.

CALVIN AMORY STEVENS, a witness produced on

5 the part of the complainants, being by me first duly cautioned and sworn in each of the above-entitled suits to testify the truth, the whole truth, and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct Examination by MR. ANDREWS:

1 Q. Are you the complainant in the first of the above named causes?

6 A. I am.

2 Q. Are you an owner and holder of Tennessee State bonds?

A. I am.

3 Q. Will you produce Tennessee State bonds of which you are an owner and holder?

A. There are twenty of the bonds issued to and sold by the Mobile & Ohio R. R.

(Bonds produced and marked complainant's Exhibit No. 1, W. H. D. L., N. P.)

7

(Complainant's counsel offers in evidence what purport to be certain papers hereto annexed, marked Complainant's Exhibits Nos. 2, 3, 4, 5, 6, 7, 8, 9, W. H. D. L., N. P.)

(Defendant's counsel objects to the admissibility of these receipts on the ground that they are not the best evidence.)

4 Q. Are the holders of the class of bonds you

8 have just proved numerous, and do they reside in various parts of the United States and Europe?

A. I understand that such is the case.

5 Q. Are you complainant in the second of the above-named causes?

A. I am.

6 Q. Are you an owner and holder of Tennessee State bonds?

A. I am.

7 Q. Will you produce Tennessee State bonds of which you are an owner and holder?

A. There are three issued to the Mississippi & Tennessee R. R.

(Bonds produced and marked Complainant's Exhibit No. 10, W. H. D. L., N. P.)

(Complainant's counsel offers in evidence what purport to be certain papers hereto annexed, marked Complainant's Exhibit No. 11, W. H. D. L., N. P.)

(Defendants' counsel objects to the admissibility of these receipts on the ground that they are not the best evidence.)

8 Q. Are the holders of this class of bonds numerous, and do they reside in various parts of the United States and in Europe?

A. I understand that such is the case.

Cross-examination:

9 x Q. How long have you been the owner and holder of the twenty bonds which you say you hold and which you claim were issued by the Mobile & Ohio R. R., or about how long?

A. I should judge that I had bought them all since about 1872 and 1873.

10 x Q. Give the date of purchase of said bonds as accurately as you can?

A. I could not.

11 x Q. Have you any memoranda from which you can ascertain exactly or approximately the date of purchase?

A. I could tell about when I first bought any Tennessee bonds which, I think, was not before 1872 or 1873; the majority of my bonds were purchased

13 within the past three years.

12 x Q. This is not an answer to the question I asked you; please answer as to these bonds and not any other bonds?

A. I cannot answer your question more explicitly.

13 x Q. Have you no memoranda by reference to which you can ascertain when and from whom you purchased the twenty bonds you claim to own, and which you claim were issued by the Mobile & Ohio
14 R. R. Co.?

A. Not with accuracy, as I purchased from different parties, and did not always keep the numbers.

14 x Q. Can you not, by reference to the partial memoranda which you say you have, ascertain when and from whom you purchased the twenty bonds, and, if so, please produce such memoranda?

A. It is likely that I could in some instances, but I would prefer giving you the names of my brokers
15 and let you trace them up.

15 x Q. Will you please produce the memoranda which you say you have, and which will disclose when and from whom you purchased said twenty bonds?

A. I will not agree to put myself to any such unnecessary trouble, though if you will allow me during the next week I will give you such light on that subject as I can.

16 x Q. How long do you think it will take you
16 to refer to the memoranda in question, and where is it?

A. Any memoranda that I have is at my house in New York; it might take me very briefly and it might take me several hours to get it.

17 x Q. Please produce it at the adjourned meeting?

A. I will do my best.

18 x Q. Have you purchased or gotten by ex- 17
change or otherwise any of said twenty bonds within the last three years?

A. I have.

19 x Q. Of which said bonds have you become the owner within the last three years; give the numbers, if you can?

A. I will do so after referring to the memoranda.

Adjourned to 12 M., 16 February, 1880.

52 Broadway, 18
February 16, 1880.

20 x Q. Have you now at hand the memorandum referred to in your last answer, which discloses when and from whom you purchased the twenty bonds which you claim were issued to the Mobile & Ohio Railroad, and the three bonds which you claim were issued to the Mississippi & Tennessee Railroad; if so, please produce it?

A. I have taken considerable pains to refresh my memory on the points referred to, and have prepared 19
the following statement; many of the bonds that my father gave me and which are the basis of all my Tennessee litigation, cost over 90; I should say that he paid on an average between 80 and 90 for all that he bought; the bonds which I bought, myself, previous to his death, cost me on an average I should say between 50 and 60; my bonds bought since his death cost me on an average I should say between 40 and 45; if you wish to know the exact price of each identical bond, it is impossible for 20
me, either by my books or memory, to tell you; but I will give you the names of all the brokers through whom they were bought, on whose books you will undoubtedly find a full record of all the particulars; of the bonds proven at our last meeting, I can only positively identify two, Nos. 3748 and 3734, both registered Nov. 20, 1878, and bought of

21 J. B. Manning, Dec. 4, 1878, at $1,050; peculiar circumstances at the time of the purchase fixed the transaction in my memory.

(Respondent's counsel excepts to the foregoing answer as irrelevant and incompetent, and as not being responsive to the question asked.)

21 x Q. I again repeat, have you no memoranda
22 by which you can tell when and from whom you purchased said twenty bonds and said three bonds?

A. I have not, that I am aware of.

22 x Q. Did you inherit or receive by gift or otherwise from your father, Calvin Stevens, Tennesse State Bonds; and if so, at what time and how many?

A. I should say within three months before his death, March 15, 1877, he gave to me between one hundred and one hundred and fifty thousand.

23 23 x Q. Are you able to distinguish between the bonds so received from your father and the bonds purchased by you?

A. By careful examination I could undoubtedly do so.

24 x Q. Have you made such an examination as will enable you to distinguish between those that were the gift of your father and those you purchased?

A. I did, in reference to the bonds in the suits
24 which Gen. Humes had charge of.

25 x Q. Have you done so with reference to the bonds in these suits?

A. I have not in reference to them all.

26 x Q. How many of said bonds are you able to so distinguish, and what are the numbers of the same?

A. There may possibly be one or two, and there

may be none at all. I mean I may have received 25
one or two of the bonds in suit from my father as a gift.

27 x Q. Give the numbers of the bonds which you may have received from your father?

A. If there is or are any they must be among the four which were issued after 1860.

28 x Q. How are you able to state this fact; by reference to what papers, and what are your sources of information?

A. Because I think that I took those four bonds 26
out of a package in which there may have been some of the bonds given me by my father.

29 x Q. What are the numbers of those bonds?

A. I could not tell without looking at the bonds.

30 x Q. Please examine the bonds and give the numbers?

A. Nos. 1,1579 B, 11,610 B, 431 and 433 C.

31 x Q. How do you know that you did not receive the other of said twenty bonds and said three bonds from your father? 27

A. Because they were not taken from father's lot.

32 x Q. Have you kept separate and apart from your other Tennessee bonds those received from your father, as above stated?

A. I have sufficiently to positively answer the question you asked.

33 x Q. Was there a written instrument by which your father gave you the bonds above mentioned as having been received from him by gift; if so, 28
please produce the same?

A. There was a written instrument; I decline to produce it, for the good reason given when a similar enquiry was made by Mr. Humes on a previous examination; but if counsel for defendants in the least doubts my statements in regard to that instrument, the gentleman who drew it and was present

29 at the time of its execution is ready to corroborate what I have said.

(Respondent's counsel insists on the production of said instrument, and requests the notary to certify the question and answer and the proceedings to the Circuit Judge of Second Circuit for adjudication; and he further gives notice that he will move to suppress said deposition unless said instrument
30 is produced and said question fully answered.)

34 x Q. Was not your father in his lifetime a large holder of Tennessee bonds, and had he not been such holder for a great number of years—as early as 1870 or before that time; say from 1865 to 1870, and thereafter, up to the time of his death?

A. He was, from 1865, I think, and up to shortly before his death.

35 x Q. Was he not an accurate observer of the
31 financial affairs of the State of Tennessee, and did not you and he discuss the same?

A. Speaking in reference to my father, he was but slightly informed as to Tennessee affairs. I do not think, judging from conversation I held with him that he had the least knowledge of the rascality that was going on among the railroads of that State. Speaking in reference to myself, it was not until after my father's death that I learned the true facts of the case—how the railroad interest in
32 Tennessee had corrupted the Legislature, had suborned the public press, and in collusion with a corrupt Legislature, had attempted to wrest from the bondholders their vested rights.

(Respondents' counsel excepts to the above answer, save to the first sentence thereof, as not being responsive to the question asked, and as being impertinent and irrelevant.)

The witness further states, in answer to the above 33
interrogatory 35:

That he offers in support of his assertions the deposition of N. W. Motherall, taken at Cleveland, Tennessee, on the 10th day of February, 1879, before a sub-committee of investigation appointed by the Tennessee Legislature; copy of which deposition complainant offers in evidence. Also the deposition of N. C. Galloway, taken before a similar committee at Nashville, Feb'y 7, 1879, a copy of which I also offer in evidence. 34

(Marked Complainants' Exhibits 12 and 13, W. H. D. L., N. P.)

(Defendants' counsel excepts to this further statement, on the ground that it is grossly incompetent, impertinent and irrelevant, and as being a transparent effort by indirection to lug into the record incompetent testimony. And also to the said exhibits being taken as 35
a part of this deposition.)

36 x Q. Was not your last answer to x Q. 35 known by you to be incompetent, and was it not given with a view of getting into the record the so-called depositions of Motherall and Galloway, to the prejudice of defendants, and in order to produce the impression on the mind of the Court that the defendants were connected in some way with the transactions testified to by said Motherall and Gal- 36
loway?

A. Such was certainly not the case. It was given by me in support of a truthful assertion which I had previously made, and which defendants' counsel aimed to have stricken out, because, as I believe, he feared that the truth might injure his clients' cause.

37 37 x Q. Will you please point out what question it was that evoked the answer objected to; and do you claim that your answer was responsive to any question asked by counsel; if so, what question?

A. It was given in reply to x Q. 35. I claim that it was a proper answer as to the observation inquired about, at least such is the result of my observation and investigation.

38 x Q. Can you not state whether you have purchased any or all of said twenty bonds and said
38 three bonds within a short time prior to the bringing of these suits?

A. I cannot.

39 x Q. Can you state exactly or approximately how long you have owned said bonds or any of them?

A. I cannot. There may be among the lot some that I purchased several years ago, not before 1870, I should think.

40 x Q. Can you state positively whether you have owned any of said bonds three years?

39 A. No, I cannot.

41 x Q. Can you state positively that you have owned any of said twenty bonds and said three bonds, two years; if so, which ones?

A. I cannot.

42 x Q. Had you been engaged in purchasing Tennessee State bonds up to the time of bringing these suits?

A. I had, more or less, since 1870, I should say.

43 x Q. Were you not, shortly before the bring-
40 ing of these suits, engaged in purchasing Tennessee State bonds on the New York market, and selecting from the lots so purchased those you supposed to be liens on Railroads, and selling those supposed by you not to be liens on Railroads?

A. I bought and exchanged for Tennessee Railroad lien bonds at the time you mention.

44 x Q. Can you state whether or not any or all

of said twenty bonds and said three bonds were 41
included in said purchases?

A. I cannot.

45 x Q. Have you not inaugurated suits, similar to these, against all the other railroads to whom bonds were issued by the state of Tennessee, and were they not inaugurated simultaneously?

A. Against many other roads, but not all.

46 x Q. In your answer to x Q. 43 you state that you bought and exchanged bonds that were liens upon railroads; do you mean by exchanging bonds, 42
that you gave bonds that were not liens for bonds that you supposed were liens?

A. In a few instances I exchanged plain Tennessee State bonds, unsecured by any lien, for railroad lien bonds, though I acquired mostly by purchase.

47 x Q. Did you pay any difference in the exchange last mentioned, and if so, what difference?

A. I think I have paid as high as 3 per cent. difference.

48 x Q. Did you exchange any straight Tennes- 43
see bonds unsecured by any lien for bonds that you supposed were secured by lien on some railroad, bond for bond, without paying any difference therefor?

A. I never have.

49 x Q. You state you have paid as high as 3 per cent.; what is the lowest premium you have paid?

A. Possibly I may have exchanged as low as $\frac{1}{8}$ to $\frac{1}{4}$, ranging from there to as high as 3 per cent.

50 x Q. Was the premium upon the face of the 44
bond or on the price of the bond?

A. On the par value of the bond.

51 x Q. Did you notify the person from whom you received the bond that you were giving them an unsecured bond and receiving from them a secured bond, as you thought?

45 A. I could not say as to that; the privilege was one of selection that was purchased.

52 x Q. Have you exchanged bonds as above stated, or in any other way, with Mr. Peter Geddes?

A. I have not.

53 x Q. Have you obtained any of the bonds sued on by you, in any of the suits against the Tennessee Railroads, from Mr. Geddes or any other member of the Tennessee bondholders' committee or association?

46 A. I have not; I own all my Tennessee bonds.

54 x Q. Do you mean to say, assuming you are now the owner of the bonds you now hold, that you have never exchanged with or purchased from Mr. Geddes, or any member of the Bondholders' Committee any of the bonds upon which you have now brought suit in these or any of the other Tennessee railroad suits?

A. Such is the case in reference to all the bonds I own, and in reference to all members of the com-

47 mittee excepting R. S. Moran. My impression is, I bought a small lot of bonds from him, not however with a view of bringing these suits, but as an investment.

55 x Q. Has Tennessee paid interest on her bonds since 1874?

A. She has not.

56 x Q. Have you received any interest on bonds of Tennessee held by you prior to 1874; if so, what years?

48 A. I could not answer that question.

57 x Q. In your bills filed in these cases, you attach as Exhibit C to the same what purports to be a true copy of the bonds sued on; please produce one of the 20 bonds and of the 3 bonds, the bonds of which said Exhibit C is a copy?

A. This is not a true copy; the printer has omitted to give the number and the letter, though in every other respect I believe that it is.

58 x Q. Please examine the said twenty bonds 49
and said three and produce and give the number and series wherein it is stated that said bond is issued "in pursuance and by authority of an Act of the General Assembly, passed February 11th, 1852, to establish a system of Internal Improvements in said State?"

A. It is the same in purport, but the words differ.

59 x Q. Does any one of said bonds upon its face purport to have been issued in pursuance of the Act of February 11th, 1852; if so, which one? 50

A. No; though some of the bonds include that Act, as I understand it, and none of them necessarily exclude it.

60 x Q. Does any one of said bonds purport, upon its face, to have been issued in pursuance of any act to establish a system of Internal Improvements in said State?

A. They were issued in pursuance and under the provisions of an Act passed 1851-2, which was for that purpose, as the statute proves, though the 51 bonds do not state it in full.

61 x Q. You have not answered my question; I again repeat x Q. 60.

(Complainant's counsel objects to the question, and advises witness not to answer, on the ground that the bond is the best evidence.)

A. I decline to answer.

62 x Q. Is there anything, and if so what, upon 52 the face of any of said bonds or endorsements thereon, which indicates for what purpose said bond was issued?

A. The letter and number both do.

63 x Q. Do you mean to say, that by looking at the number or letter upon any or all of said bonds, that you are enabled to tell for what purpose the same were issued?

53 A. By the letter and number, and the railroad company's receipt I claim that I can.

64 x Q. Look at bond 5,042, letter B, white ; now produce the receipt which enables you to say that that was issued to the Mobile & Ohio R. R. Co ?

A. I produced a certified copy of the original receipt which says such is the case.

65 x Q. How do you know that the bond 5,042, referred to in the paper which you call a receipt, is the same bond as that here introduced by you in
54 evidence ; can you state the letter and series of said bond, so mentioned in said receipt, is the same as that produced by you here with the corresponding number ?

A. I claim that the letter, number and date of receipt proves it positively.

66 x Q. Does the paper that you call a receipt purport to give the letter or series ?

A. It does not give the letter, but it gives the date which, in connection with the number, marks
55 it.

67 x Q. Are you able to swear that the State of Tennessee has issued no other bond corresponding in number with 5,042 ?

A. I certainly could not swear as to every thing Tennessee and her railroads may have done, but I challenge counsel for defendants to produce any other bond of that number issued at that date.

68 x Q. I am opposed to challenges of all kinds, and therefore cannot accede to witness' request, but
56 again ask witness if he is able to swear that the State of Tennessee has issued no other bond corresponding in number with No. 5,042 ?

A. I am ready to swear that the records, as I understand them, clearly prove such to be the case.

69 x Q. Are you able to state, with reference to the remainder of said twenty bonds and said three bonds, that they are the only bonds issued by the State of Tennessee bearing the same numbers ?

A. There are other bonds of the same number, 57
but issued at different dates.

Q. How do you know this?

A. By the receipts; I know the dates; and by the registration of the bonds; I know that there are not other bonds of the same numbers issued at the same date.

71 x Q. Will you please explain how it is that Exhibit C, which you attach to your bills of complaint in these causes, and which purports to give a true copy of bonds claimed to be held by you and 58
issued to the Mobile & Ohio Railroad Company, and Mississippi & Tennessee Railroad Company, in fact does not give a correct copy of the same?

A. I certainly do not know how the mistake occurred; I recollect distinctly of leaving with my counsel one of my bonds that the copy might be correct.

Adjourned to February 17th, 10 A. M.

——— 59

52 Broadway,

New York, Feb. 17th, 10 A. M.

Present—counsel as before.

Cross-examination continued:

72 x Q. Did you ever fund or register any of your Tennessee bonds and coupons under the funding act of 1873?

A. My father registered all of his bonds and 60
funded past due coupons under the act.

73 x Q. Did you ever buy any Tennessee bond that had not been registered under the act of 1873?

A. I have not, with possibly the exception of two bonds bought in 1878, which were registered to prove that they were regularly issued, as I understand the rules of the Stock Exchange to require.

61 74 x Q. Have you now, or do you now own any unregistered bonds of those purchased by you since 1870?

A. I have no Tennessee bonds that I am aware of but what have been registered under the act of 1873, and thereby proven to have been regularly issued.

75 x Q. Did you know when you first began the purchase of Tennessee State bonds on what account they were issued, whether for purely State purposes or for railroads or on any other account?

62 A. I did not in reference to the first few bonds that I purchased, as I was then not in a position to be acquainted with Tennessee affairs; but in reference to the majority of the bonds purchased, I carefully selected and bought such as were issued to and sold by the railroad companies, and secured by a first mortgage lien on their property.

(Defendant's counsel excepts to so much of the answer as is not strictly responsive to the question particularly the conclusions of
63 law by the witness.)

76 x Q. About what time were you aware or were you informed that the bonds issued by the State to the various railroad companies of Tennessee, under the Internal Improvement Laws, were liens upon the same?

A Not until after March 15th, '77; before that date I was in no position to be familiar with Tennessee affairs.

64 77 x Q. Had you not been a large purchaser of Tennessee bonds prior to that time?

A. Not a large purchaser; less than $20,000; and at a time when I knew very little of the subject, except that I was buying a Tennessee bond.

78 x Q. How long after March 15th, '77, was it before you were informed that the bonds issued to the various railroads of Tennessee constituted a lien

upon them ; give the time as nearly as you can 65
when you were so informed ?

A. I should say that it was within a year from that date that I read the Statutes of Tennessee and the arguments *pro* and *con*, and became convinced of that belief.

79 x Q. What arguments *pro* and *con* do you refer to ?

A. I refer to the opinion of Davies & Davis on one side, and I think it was the brief of Humes & Poston on the other ; then the opinion of Justice 66
Field in the Minnesota case further strengthened my conviction ; also the arguments and proceedings in the Mobile & Ohio case.

80 x Q. Did you know of the existence of said supposed lien before you read Humes & Poston's brief and the proceedings in the Mobile & Ohio case, and if so, how long before ?

A. I should say certainly not, as I knew scarcely anything of Tennessee affairs until after March 15, 1877. 67

81 x Q. How soon after March 15, 1877, did you know of the existence of the so-called lien ?

A. I could not say positively, but it must have been after the date that R. T. Wilson secured permission from me to send a telegram to Governor Porter, which I think was Dec. 11, 1877.

82 x Q. Will you state positively that it was after that time ?

A. I do positively state so to the very best of my recollection. 68

83 x Q. From whom or from what source did you get your first information on the subject of the supposed lien in favor of the bondholders ?

A. I have already given you the source.

84 x Q. Did any person or persons, if so, who called your attention to the arguments and documents referred to in your answer to x Q. 79 ?

69 A. In a letter written by Mr. R. T. Wilson to John T. Terry, and read at a public meeting, my attention was called to such arguments, and as I recollect it I immediately afterwards applied to Mr. Iselin, Jr., for a copy, which I think he kindly loaned me.

85 x Q. After you had seen said arguments did you then become a large purchaser of Tennessee bonds issued to the railroads?

A. After that date I increased my present holdings.

70 86 x Q. Was it after that date that you exchanged Straight Tennessee Bonds for those which you supposed were a lien upon the railroads to which they were issued?

A. It was.

87 x Q. As I understand you you were the owner of less than 20,000 Tennessee State Bonds aside from those your father gave you at the time and until after you were informed as above stated of said lien?

71 A. Your understanding is correct.

88 x Q. Of the twenty State Bonds of Tennessee which you say you held prior to your being informed, as above stated, of this lien, were any, and if so, how many, bonds issued to railroads!

A. There were lien bonds among them, but I could not tell you how many.

89 x Q. Of those Tennessee bonds above-stated as given you by your father, were any of them, and if so how many, bonds issued to railroads?

72 A. I should say that only a small part of them were such.

90 x Q. Were any of them bonds issued to railroads?

A. They were; I can't say how many.

91 x Q. After you were informed, as above stated, that the bonds issued to railroads were secured by liens on said roads, as I understand you, you then

for the first time began to exchange bonds which 73
you had received from your father and which were not issued to railroads for those which were issued to railroads?

A. Such is the case, though in most instances I sold the bonds given me by my father which were not issued to railroads and bought others which were; I exchanged but few.

92 x Q. How many of the so-called Tennessee lien bonds have you purchased since you were informed of the existence of said lien? 74

A. I could not answer that question without referring to my books, and I refuse to answer any question that unnecessarily inquires into my private affairs.

(Respondent's counsel insists upon an answer to the question and asks the Notary to certify the same to the Circuit Judge, and gives notice that he will move to suppress the deposition unless the question is answered. 75

93 x Q. Did any or all of the Tennessee bonds purchased or exchanged for by you, including the said 20 bonds and the said 3 bonds sued on herein, have a very large number of unpaid and past due coupons attached to them at the time of purchase or exchange?

A. In many instances they had, in some instances they had not, I should say.

94 x Q. All that you purchased or exchanged for 76
after you were informed, as above stated, of the existence of said lien had a very large number of unpaid and past due coupons attached to them at the time of such purchase or exchange, had they not?

A. They had usually seven unpaid coupons attached.

95 x Q. When were you, for the first time, in-

77 formed of the existence of the alleged receipts marked in complainant's exhibits herein?

A. I could not say definitely, though it was after March 15th, 1877.

96 x Q. Did you procure copies of the same from the office of the Secretary of State at Nashville?

A. I did.

97 x Q. Have you more than said 20 of the Tennessee bonds which you allege were issued to the Mobile & Ohio Railroad Company, or more than
78 the said 3 which you allege were issued to the Mississippi & Tennessee Railroad Company?

A. I have in reference to the Mobile & Ohio but not in reference to the Mississippi & Tennessee. I owned, I think, about 40 of those issued to the Mobile and Ohio Railroad Company when I commenced these suits.

98 x Q. Have you purchased any more Tennessee bonds which you claim were issued to the Mobile & Ohio Railroad Company since the beginning of these
79 suits?

A. My impression is that I have.

99 x Q. Can you give the numbers of those Tennessee bonds purchased by you before the commencement of these suits and those purchased since, which you claim were issued to the Mobile & Ohio R. R., under the internal improvement laws of Tennessee?

A. I certainly could not without my books, and I do not know that I could with them.

80 100 x Q. Can you state that the said 20 bonds, marked as complainant's exhibits herein, have not been purchased by you since the beginning of this suit, some or all of them?

A. I can most positively state that they were owned by me before the suit was commenced.

101 x Q. How are you able to do this, if you are not able to give the numbers of those purchased by

you before, and those purchased by you since the 81
commencement of this suit?

A. For the very good reason that I carefully kept the number of each bond that I sued on and have been careful to prove only such.

102 x Q. You state in your bill of complaint that you are the owner of thirty Tennessee bonds issued to the Mobile & Ohio R. R. Co. Can you give numbers of the other ten and why did you not offer in evidence the other ten bonds?

A. I can give the numbers of the other ten bonds. 82
I did not prove more because twenty will test the question as well as thirty or fifty; indeed I was on the point of proving but ten, it being optional with me how many I care to prove.

103 x Q. Why is it, if as you state, you had carefully noted the numbers of the bonds on which these suits were brought, you did not set forth the numbers in your bill of complaint?

A. I certainly know of no reason, except that my counsel did not think it necessary. 83

104 x Q. Have you ever presented, at any time, any of your past-due coupons upon the bonds which you allege were issued to the Mobile & Ohio R. R. Co. by the State of Tennessee, to the Mobile & Ohio R. R. Company and demanded payment of the same?

A. I filed my bill demanding payment of the coupons, and by the company's answer to the bill I reasonably construe their refusal to pay; no other demand was ever made at any time for payment of 84
the past due coupons.

105 x Q. Have you ever demanded of the Mississippi & Tennessee R. R. Co. payment of the past due coupons upon said three bonds prior to the bringing of this suit?

A. The above answer applied to all the Tennessee Railroads against which I have filed bills, including the Mississippi & Tennessee R. R. Co.

85 106 x Q. Have you ever prior or subsequent to the bringing of the suits, at any time requested or demanded of the Governor of Tennessee that he appoint a receiver to take charge of and operate the Mobile & Ohio R. R. or the Mississippi & Tennessee R. R., and out of the earnings of said railroads pay the coupons due on said bonds sued on herein?

A. I have not.

107 x Q. Have you ever since your ownership of said bonds herein sued on made any legal effort to
86 require the comptroller or treasurer of Tennessee to apply the revenues of said State, collected by said State, to the payment of the past due coupons on said bonds?

A. I have not.

108 x Q. Is there such an organization in the city of New York as the Committee of Tennessee Bondholders, and if so, how long has it had an existence?

A. There is; some time after December 11th,
87 1877.

109 x Q. Were you in any way connected with that organization, and if so, in what capacity?

A. I was its secretary, and am now its treasurer.

110 x Q. What are its objects and purposes?

A. To enforce the rights of the bondholders.

111 x Q. Look at the letter now shown you of Feb. 15, 1877, and state whether the signature "Calvin Stevens, by C. Amory Stevens, Atty," was
88 affixed by you?

A. It was.

(Respondent's counsel offers said letters in evidence; marked Respondent's Exhibit No. 1, W. H. D. L., N. P.)

112 x Q. Look at letter dated New York, Dec. 15, 1877, is the signature "The Estate of Calvin Stevens, C. Amory Stevens, Trustee," your signature?

A. It is.

(Respondent's counsel offers said letter in evidence; marked Respondent's Exhibit No. 2, W. H. D. L., N. P.) 89

113 x Q. Did you send the telegram of the date Dec. 11, 1877, here shown you to Gov. Porter?

(Telegram offered in evidence; marked Resp'ts Exhibit No. 3, W. H. D. L., N. P.)

A. R. T. Wilson wrote and sent it with my approval. 90

114 x Q. Was not the Committee of Tennessee bondholders in existence at the sending of this telegram?

A. It was not; that committee was organized within three months thereafter.

115 x Q. Give the names of the other officers of said committee at the time of its organization and afterwards?

A. Eugene Kelly was chairman, John T. Terry, Peter Geddes, James K. Duer and R. S. Moran 91 were also members; I was not a member of the committee; I was its secretary.

116 x Q. What amount of Tennessee bonds were represented by the members of said committee?

A. I decline to make public the affairs of that committee; it would be a breach of trust on my part to do so.

(Respondent's counsel excepts to the answer and requests the notary to certify the 92 same to the Circuit Judge, and gives notice that he will move to suppress this deposition unless the question is answered fully.)

117 x Q. Are not the suits in these cases and the other suits brought by you against the other Tennessee railroads now being conducted under the auspices of said committee?

93 A. They certainly are not in these cases where no members of the committee are parties to the record.

118 x Q. Is there no agreement by which these suits are to be prosecuted and the expenses of the same to be borne by yourself and other members of said committee jointly?

A. There is not; on the contrary I brought the suits independently myself, without the knowledge or aid of the committee.

94 119 x Q. Was not a circular addressed by said committee to Tennessee bondholders at large, and is not the paper now shown you a copy thereof?

A. It is.

(Respondent's counsel offers said paper in evidence; marked Respondent's Exhibit No. 4, W. H. D. L., N. P.)

120 x Q. Did you not sign said circular?

A. I have no recollection of signing said circular,
95 though it was issued as it is with my approval.

121 x Q. Were not these suits, amongst others, adopted by the committee of Tennessee bondholders as set forth in said circular?

A. They were.

122 x Q. Are they not to pay *pro rata* the expenses incident to the litigation?

A. There is no such agreement to that effect.

123 x Q. Is there no understanding, express or implied, to that effect?

96 A. I naturally expect that those who share in the benefits of the suit ought and will contribute towards the expenses of the same, and it is left to their honor to reimburse, *pro rata*, the large amount that I have individually expended.

124 x Q. Have you not an agreement with your counsel by which they are to be paid a sum larger in the event of success than if unsuccessful?

A. I have not. 97

125 x Q. Had you such an understanding at the commencement of these suits?

A. I had not.

126 x Q. Does the circular above referred to and marked Respondent's Exhibit No. 4, truly set forth the terms upon which other Tennessee bondholders are allowed to participate in the benefits of this litigation?

A. It does; at least there was nothing printed in the circular but what was intended to be true, and 98
I know of nothing in the circular but what is true.

127 x Q. Are you able to state whether the said 20 bonds and the said 3 bonds were issued for bridge purposes, or for ironing and equipping the roads of respondents, and if so, how?

A. I do not know whether the bonds in question were issued to build bridges or buy rails, nor do I care so long as it is proven that the bonds were issued to and sold by the R. R. Co., and carry a lien on the property. 99

(Respondent's counsel objects to such part of the answer as is not responsive to the question.)

NEW YORK, Feb'y 19, 1880.

Present—Counsel as before.

128 x Q. Have a large number of the holders of Tennessee bonds responded to the circular issued by the committee of Tennessee bondholders, and ac- 100
ceded to the terms therein, by paying the five dollars and the coupon?

A. Such is a fact.

129 x Q. Is it not the purpose of said committee to use the money and coupon so received for the purpose of prosecuting these and other suits against the R. R. Cos. of Tennessee that have received State aid under the internal improvement laws?

101 A. I refer you to that committee for answer to what their intention may or may not be. I am not a member of the committee; merely its official and for good reasons previously explained, I decline to make public its affairs.

(Respondents' counsel excepts to this answer, and requests the notary to certify to the Circuit Judge, and give notice that he will move to suppress this disposition unless
102 the question is answered fully.)

130 x Q. How long have you lived in the City of New York, and what is your business?

A. Ten or fifteen years; and I am not in active business.

131 x Q. Are you not a large holder of stocks and bonds, and have you not kept yourselves posted as to the value of securities and their purchase and sale?

A. I am and have aimed to do so since my father's
103 death, March 15, 1877.

132 x Q. Have the bonds of the State of Tennessee ever been sold on the New York Stock Exchange other than as Tennessee bonds, old and new, without reference to the purpose for which they were issued?

A. "Old" and "New," and in the case of the "New," further specified as "New" and "New Series," but Tennessee bonds have been and still are largely sold independent of the Stock Exchange
104 by their number.

133 x Q. Please give me the names of all the brokers through whom you purchased Tennessee State bonds?

A. The following are all such to the best of my recollection:

John Buckley.

H. T. Morgan & Co., 35 William street, N. Y.

J. B. Manning 6 Wall street, N. Y.

Newton Duell, . Pine street, N. Y. 105

A. H. Muller & Son, 7 Pine street, N. Y.

Hooper De Wing or De Wing & Son, 11 Broad street, N. Y.

H. C. Williams & Co., 49 Wall street, N. Y.

The bonds bought of A. H. Muller & Son were bought at the Real Estate Exchange at auction; they cost less than 40.

134 x Q. In your answer to cross-question 84, you say that your attention was called to the subject of the lien carried by the bonds upon the railroads to 106 which they were issued by a letter written by R. T. Wilson to John T. Terry, and read in a public meeting; is not that letter dated June 11th, 1878?

A. It is.

135 x Q. It was by that letter, as I understand you, that you first became aware of Humes & Poston's brief, already alluded to by you in your answer to cross-question 79, and after that that you procured and read the same?

A. I think it was; at least, to the best of my 107 recollection.

136 x Q. Are you acquainted with the handwriting of Peter Geddes and John B. Manning, and if so, please look at the letters now handed you and say if they are in their respective handwritings?

A. I should say that they are.

(Letters offered in evidence, and marked respectively "Respts' Exhibits, 5 and 6, W. H. D. L., N. P.") 108

137 x Q. Were you aware at or about this time of the substance of correspondence between holders of Tennessee State bonds in New York and the authorities of Tennessee which resulted in a committee of the Tennessee Legislature coming to New York and meeting a committee of arbitration, so called, on March 8, 1877, in this city?

A. I was.

109 138 x Q. I here hand you copy pamphlet of proceedings of said convention published by the *Evening Post*, which, if a substantial copy of the proceedings, as you remember them, please file as part of your deposition?

A. I presume it is a correct copy.

(Copy pamphlet filed; marked Respondent's Exhibit No. 7, W. H. D. L., N. P.)

139 x Q. Did you not about the time or shortly thereafter correspond with the authorities of Ten-
110 nessee, or some of them, and urge the adoption by the Legislature of said State of a law authorizing a compromise with the holders of Tennessee bonds at 50 per cent. of the face of the bonds held, contemplating the issuance by the State of new State bonds to be received by the bondholders at the above discount, as shown by your letters and telegrams, exhibits hereto?

A. I did hold such correspondence, but nearly all the bonds that I owned at that time were plain State
111 bonds unsecured by railroad lien.

140 x Q. Were you not aware at the time of such correspondence that a proposition of the State bondholders had been made to compromise at sixty and six, and that the same has been rejected?

A. I understood that the award of the committee on arbitration which was sixty and six per cent. had been rejected.

141 x Q. When you refer to the award of the committee on arbitration, do you refer to the meeting
112 held in New York, at the Clearing House, January 25, 1877, a copy of the proceedings of which I handed you?

A. I do not; I refer to the meeting of March 8, 1877.

(A copy of said pamphlet offered in evidence, and marked Rept's Exhibit No. 8.—W. H. D. L., N. P.)

February 20, 1880.

Present—Counsel as before.

Adjourned by consent to further notice.

AUGUST 13th, 1880. 113

There being no further questions asked witness, this deposition is closed.

CALVIN AMORY STEVENS.

Subscribed and sworn to before me, this 13th day of August, A. D. 1880.

WILLIAM H. DE LANCEY,
[L. S.] *Notary Public*,
Westchester County.

Acting in New York Co. under and by 114
virtue of Chapter 807 of the Laws of 1873 of the State of New York.

Certificate.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
State and County of New York,

I, WILLIAM H. DELANCEY, a Notary Public, in and for the State and County aforesaid, and duly commissioned and qualified under the laws of the United States to take depositions for use in the 115
Circuit Courts of the United States, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of the said witness is material and necessary for the complainant in the cause in the caption of said deposition named, and that the said witness lives, and did live at the time of taking said deposition, in the City and County of New York, the same being at a greater distance than one hundred miles from the City of Memphis, where the Court, at which it is 116
expected the said cause will be tried, was appointed to be held, to wit: more than five hundred miles therefrom.

I further certify that the said witness was examined and cross-examined by the counsel for the respective parties to the cause named in the caption hereto.

I further certify that on the 13th, 16th, 17th, 19th, 20th days of February, and the 13th day of August, A. D. 1880, I was attended at my office, No. 52 Broadway, in the City, County and State of New York, in the Southern District of New York aforesaid by Edward L. Andrews, Esq., solicitor, and of counsel for the complainants, L. E. Wright, Esq., solicitor, and of counsel for defendants, and by Calvin Amory Stevens, the witness, who was of sound mind and lawful age, and the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and from his statements, and after carefully reading the same to witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of annexing the several Exhibits, and of sealing up and directing the same with this certificate of the reasons aforesaid for taking the said deposition, with my own hand, to the Court for which the same was taken.

And I do hereby certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In witness whereof, I have hereunto set my hand and seal this day of September, in the year of our Lord one thousand eight hundred and eighty, and of the independence of the United States the one hundred and fifth.

WILLIAM H. DELANCEY,

[L. S.] *Notary Public*,

Westchester County.

Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

IN THE CASE OF

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MOBILE & OHIO RAILROAD COMPANY,

versus

THE MOBILE & OHIO RAILROAD COMPANY *et al.*

IN THE UNITED STATES CIRCUIT COURT,

FOR THE WESTERN DISTRICT OF TENNESSEE.

I hereby certify that there were produced before me during the taking of the deposition of CALVIN AMORY STEVENS in this cause twenty (20) Tennessee bonds, each bond being for the principal sum of one thousand dollars, and bearing the impression of the Great Seal of the State of Tennessee on the face thereof.

A true and exact copy of one of said bonds is as follows:

COMPLAINANT'S EXHIBIT No. 1.

W. H. D. L.—N. P.

M. UNITED STATES OF AMERICA. M.

No. 431. C.

STATE OF TENNESSEE.

Know all men by these presents, that the State of Tennessee acknowledges to owe to
or order, one thousand dollars, lawful money of the

United States, which sum the said State promises to pay in the City of New York, on the 1st day of January, 1898, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon the presentation of the coupons thereto attached. For the performance of all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance and under the provisions of an Act of the General Assembly of said State, passed at its Session of 1851-2, and acts amendatory thereof.

In witness whereof, I, Isham G. Harris, Governor of said State, have hereunto signed my name and caused the same to be countersigned by the Secretary of said State, and the Great Seal of said State to be hereto affixed, at Nashville, this 1st day of January, 1860.

ISHAM G. HARRIS,
Governor.

J. E. R. RAY,
Secretary of State.

$1,000. $1,000.

The other nineteen (19) of said bonds are of like tenor in all respects with the foregoing, except that they differ in their numbers, being numbered as follows: 438. Nos. 10,127, 10,173, 10,193 are lettered B., and are dated January 1st, 1859. Nos. 11,579, 11,610, are lettered B., and are dated January 1st, 1860. Nos. 3,935, 3,992, 4,193, 4,221, 5,042, are lettered B., and dated January 1st, 1856. Nos. 5,571, 5,646, 5,698, 5,788, 5,912, 5,921, 5,949 and 5,955 are lettered B. and are dated the 1st day of January, 1857.

The words "and Acts amendatory thereto" ap-

pear on bonds Nos. 431, 438, 10,127, 10,173, 10,199, 129
11,579, 11,610, after the word "Session of 1851-2."

Nos. 438, 10,127, 10,173, 10,199, 11,579, 11,610 are signed:

ISHAM G. HARRIS,
Governor.
J. E. R. RAY,
Secretary of State.

Nos. 3,935, 3,992, 4,193, 4,221, 5,042, 5,571, 5,646, 5,698, 5,788 are signed: 130

ANDREW JOHNSON,
Governor.
F. N. W. BURTON,
Secretary of State.

Nos. 5,912, 5,921, 5,949, 5,955 are signed:

ISHAM G. HARRIS,
Governor.
F. N. W. BURTON,
Secretary of State. 131

Said bonds having forty-five (45) coupons attached to Nos. 431, 438, 10,127, 10,173, 10,199, 11,579, 11,610; thirty-three (33) coupons attached to Nos. 3,935, 3,992, 5,042, 5,571, 5,646, 5,698, 5,788, 5,912, 5,932, 5,949, 5,955, thirty (30) coupons attached to 4,193, and thirty-one (31) coupons attached to No. 4,221.

The last coupon falling due is in all respects, except as hereinafter stated, similar and like unto the following true and exact copy thereof: 132

$30. $30.

The treasurer of the State of Tennessee will pay the bearer thirty dollars, in the City of New York, on the first day of January, 1876, being the semi-annual interest then falling due on bond No. 431.

J. T. DUNLAP,
Comptroller.

133 All the coupons attached to bonds numbered 431, 438, 10,127, 10,173, 10,193, 11,579, 11,610, are signed :

J. T. DUNLAP,
Comptroller.

All the coupons attached to the other bonds as above numbered are signed :

J. C. LUTTRELL,
Comptroller.

134 There are nine (9) overdue coupons upon each of the afore numbered bonds, except Nos. 4,193 and 4,221, which have six and seven coupons overdue, respectively, the first coupon thereof having fallen due on the 1st day of January, 1876. The other eight of said coupons fall due at intervals of six months from the date of the coupon above mentioned.

All the aforesaid bonds, with the coupons attached thereto, were left by the witness, Calvin Amory
135 Stevens, for inspection by me and the solicitor for the respondents then and there present, and were inspected by me and by him.

The endorsements on said bonds are as follows : on bond No. 431, Registered under 9th Section of Funding Act, approved May 17th, 1873, Jno. C. Burch, Comptroller ; Chas. N. Gibbs, Secretary of State ..... Audited July 20, 1874

Bond No.	438	same.	.....	"	Nov. 28, 1873
"	3,935	"	.....	"	May 1, 1874
136 "	3,992	"	.....	"	Nov. 28, 1873
"	4,193	"	.....	"	May 20, 1874
"	4,221	"	.....	"	June 19, "
"	5,042	"	.....	"	Nov. 19, 1873
"	5,571	"	.....	"	June 2, 1874
"	5,646	"	.....	"	Oct. 20, 1873
"	5,698	"	.....	"	Dec. 19, 1874
"	5,788	"	.....	"	May 11, "

"	5,912	"	.....	"	Dec.	16, 1873	137
"	5,921	"	.....	"	Jan.	24, 1874	
"	5,949	"	.....	"	Dec.	19, "	
"	5,955	"	.....	"	May	1, "	
"	10,127	"	.....	"	Dec.	2, 1873	
"	10,173	"	.....	"	Feb.	24, 1874	
"	10,199	"	.....	"	Aug.	8, 1873	
"	11,579	"	.....	"	Jan.	13, 1874	
"	11,610	"	.....	"	June	1, "	

The following additional endorsements are on bonds Nos. 4,193 B. 138
" 4,221 B:

MOBILE & OHIO.

GEN. WRIGHT,
State of Winconsin.

The within bond has been assigned to the State treasurer as banking security. Bank Compt. Office, Madison, April 8, 1858.

A. LAYENDAY,
Comptroller. 139

MADISON, Dec. 14, 1858.

Without recourse in any event to

F. A. SCOFIELD,
Assistant State Treasurer Wis.

On bond No. 5,646, payable to the Home Insurance Company of New York and endorsed:

The Home Insurance Company of New York hereby assigns the within bond to bearer. 140

NEW YORK, 8 October, 1874.

CHAS. J. MARTIN,
President.

STATE OF NEW YORK, }
City and County of New York. }

Before me, a notary public in and for the city

141 and county of New York, personally appeared Charles J. Martin, known to us and known to me to be the President of the Home Insurance Company of New York, and acknowledged the above to be his signature for the purpose named, and further, I have seen the minutes of the Finance Committee of said Company, authorizing the president aforesaid to make this assignment.

Witness my hand and seal this eight day of October, 1874.

142 [L. S.] HAMILTON BRUCE,
Notary Public.

On bond 5,921, payable to David Lord, endorsed without recourse.

[L. S.] DAVID LORD.

STATE OF NEW YORK, }
City and County of New York. }

On this May 24th, 1861, before me came Daniel
143 Lord, to me personally known, and acknowledged the above to be his signature.

[L. S.] Witness my hand and official seal.

W. EDWARDS, Jr.
Notary Public.

On bond 5,949, payable to F. L. Upson and endorsed.

GEORGIA }
Oglethorpe County. }

144 Pay the within bond to

F. L. UPSON,

Dec. 9, 1868.

GEORGIA.

F. L. Upson, who is well known to me, appeared before me this day and acknowledged he signed the above order.

JNO. J. COHEN,
N. P. R. C. C.

COMPLAINANT'S EXHIBIT No. 2. 145
W. H. D. L.—N. P.

MOBILE & OHIO RAILROAD COMPANY.

150 Bonds, Letter C.

Received, Nashville, September 17th, 1860, of Isham G. Harris, Governor of the State of Tennessee, one hundred and fifty coupon bonds of the State of Tennessee, for one thousand dollars each, principal and interest payable in New York. Bonds falling due on the first day of January, 1898. First coupon 146
falling due on the 1st January, 1861. Said bonds are of the new series, bonds and coupons lettered C, and numbered from No. 367 to 516, both numbers included.

Said bonds are issued to the Mobile & Ohio Railroad Company upon their 6th application for iron and equipments to iron and equip a section of 15 miles of their road.

MILTON BROWN,
President and agent Mobile & 147
Ohio R. R. Company.

I, C. N. Gibbs, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Milton Brown, president and agent, Mobile & Ohio R. R. Company, for 150 Bonds of the State of Tennessee, Letter C, from No. 367 to 516 inclusive, the original of which is now of record in my office.

In testimony whereof, I have hereunto 148
subscribed my official signature; and, by order of the Governor,
[SEAL] affixed the Great Seal of the State of Tennessee, at the Department in the City of Nashville, this 18th day of August, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

149 STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said County, do hereby certify that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

150 Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify that JOHN C. FER-
151 RISS, Esq., whose genuine signature appears to the foregoing Certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of Law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

J. R. McCANN,
152 *Clerk.*

COMPLAINANT'S EXHIBIT NO. 3. 153
W. H. D. L.—N. P.

Received of Andrew Johnson, Governor of the State of Tennessee, three hundred coupon bonds of said State, for one thousand dollars each, beginning with No. 3886 and ending with No. 4185, both of these numbers included, dated on the 1st day of January, 1856, falling due in the year 1892, bearing an interest of six per cent. per annum, payable semi-aunually, the first coupon falling due on the 1st day of July, 1856, which bonds have been issued to aid 154
in the construction of the first section of the Mobile and Ohio Railroad, as authorized by an Act passed on the 11th day of February, 1852, "entitled an Act to establish a system of Internal Improvements in this State;" and also an Act passed on the 8th day of February, 1854, entitled an Act to amend an Act passed on the 11th day of February, 1872, "to establish a system of Internal Improvements in this State."

June 17th, 1856. 155

MOBILE AND OHIO RAILROAD COMPANY,
By A. F. HOPKINS,
President of the Co.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of the receipt of the Mobile and Ohio Railroad Company, by A. T. Hopkins, agent, for three hundred Tennessee State Bonds, from No. 3886 to 4185, the original of which is now of record in my office. 156

In testimony whereof I have hereunto subscribed my official signature, and, by order of the Governor, affixed the Great Seal of the State of
[SEAL.] Tennessee, at the Department in the city of Nashville, this 18th day of August, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

157 STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said county, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such, and that said attestation is in due form of law and by the proper officer.

158 Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court of said county, do hereby certify, that John C. Ferris,
159 Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said county, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

160 J. R. McCANN,
Clerk.

COMPLAINANT'S EXHIBIT No. 4. 161

W. H.D. L.—N. P.

Received, Andrew Johnson, Governor of the State of Tennessee, thirty-six coupon bonds, beginning at No. 4,186 and running to 4,221, both of these numbers included, dated 1st January, 1856, falling due first January, 1892, first coupon falling due first July, 1856. Said bonds are issued to the Mobile & Ohio Railroad under the provisions of the Seventh Section of an Act entitled an "Act to aid 162 in constructing a road from Chattanooga to the East Tenn. & Georgia Railroad in the direction of Knoxville, &c., passed Feb. 24th, 1856, which bonds have been issued to aid in the construction of bridges on the Mobile & Ohio Railroad in accordance with the said Seventh Section.

June 17th, 1856.

MOBILE & OHIO RAILROAD CO.,
By A. F. HOPKINS,
President of the Company. 163

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of the receipt of A. F. Hopkins, President Mobile & Ohio Railroad Company for 36 Tennessee State bonds numbered from No. 4,186 to 4,221, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, 164
[SEAL] affixed the Great Seal of the State of Tennessee, at the Department in the City of Nashville, this 18th day of August, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

165 STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

166 Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify that JOHN C. FERRISS, Esq., whose genuine signature appears to the
167 foregoing Certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of Law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

J. R. McCANN,
168 *Clerk.*

COMPLAINANT'S EXHIBIT No. 5. 169

W. H. D. L.—N. P.

Received of Andrew Johnson, Governor of the State of Tennessee, one hundred coupon bonds of said State from No. 4,948 to 5,047 both of these numbers included, principal and interest payable in New York, first coupon falling due first of Jan., 1857, bonds falling due first of Jan., 1892; said bonds are issued to the Mobile & Ohio Railroad, on their second application, being for ten miles, commencing at the 170
31st mile south of the Kentucky line and extending to the end of the 40th in pursuance of the General Internal Improvement Act of 1851-2 and 1853 and 4,

A. F. HOPKINS,
President Mobile & Ohio Railroad Co.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of A. F. Hopkins, President Mobile & Ohio Railroad Company, for 100 bonds of the State of 171
Tennessee from No. 4,958 to 5,048, the original of which is now of record in my office.

In testimony whereof I have hereunto subscribed my official signature, and, by order of the Governor, affixed the Great Seal of the State of
[SEAL.] Tennessee, at the Department in the city of Nashville, this 18th day of August, A. D. 1879. 172

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE,
Davidson County.

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said county, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such, and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE,
Davidson County.

I, J. R. MCCANN, Clerk of the County Court of said county, do hereby certify, that John C. Ferris, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said county, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said Court, [SEAL.] at office, this 18th day of August, 1879.

J. R. McCANN,
Clerk.

COMPLAINANTS' EXHIBIT No. 6. 177

W. H. D. L.—N. P.

$270,000. MOBILE AND OHIO RAILROAD.

Received, Nashville, August 28th, 1857, from Andrew Johnson, Governor of the State of Tennessee, two hundred and seventy coupon bonds of said State, of one thousand dollars each; bonds payable on the 1st day of January, 1892, principal and interest payable in New York, first coupon falling due on the 1st day of January, 1858 -number of said 178 bonds, 5,523 to No. 5,792, both numbers included.

Said bonds are issued to the Mobile and Ohio Railroad Company, on their third application, being for twenty-seven miles commencing at the end of the fortieth mile south of the Kentucky line, and extending to the end of the sixty-seventh, in pursuance of the General Internal Improvement Act of 1851-2 and 1853-4.

MILTON BROWN,
President and Agent 179
Mobile & Ohio R. R. Co.

I, G. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of the receipt of Milton Brown, President and Agent of the Mobile and Ohio Railroad Company, for 270 Tennessee State bonds, from No. 5,523 to 5,792, the original of which is now of record in my office.

In testimony whereof I have hereunto subscribed my official signature, 180 and, by order of the Governor, affixed the Great Seal of the State of [SEAL.] Tennessee, at the Department in the city of Nashville, this 18th day of August, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

181 STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

182 Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify that JOHN C. FER-
183 RISS, Esq., whose genuine signature appears to the foregoing Certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of Law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

J. R. MCCANN,
184 *Clerk.*

COMPLAINANT'S EXHIBIT NO. 7. 185

$68,000.

MOBILE AND OHIO RAILROAD.

Received from Isham G. Harris, Governor of the State of Tennessee, sixty-eight coupon bonds of said State each for one thousand dollars principal and interest, payable in New York, bonds falling due on the 1st Jan., 1892, 1st coupon falling due on the 1st of January, 1858, numbers of said bonds 186
from No. 5903 to 5970 both numbers included.

These bonds are issued to the Mobile and Ohio Railroad Company thus: 44 of said bonds to aid in construction of bridges across the two Ohio rivers, being two-thirds of the surplus of $100,000 granted to aid in construction of bridge across Big Hatchen river on Central Mississippi and Tennessee Railroad, which surplus was transferred from Forked Deer river on Central Mississippi and Tennessee Railroad to the 2 obions on the Mobile and Ohio Railroad, 187
by act of 29th Oct., 1855.

24 of said bonds are issued in accordance with an Act passed Feb. 21, 1856, to aid said Mobile and Ohio Railroad in constructing bridges. (See p. 145 Acts 1855-56)

Nashville, Nov. 16, 1857.

MILTON BROWN,
President and Agent
Mobile & Ohio R. R. Co.

188

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of the receipt of Milton Brown, President and Agent Mobile and Ohio Railroad Company, for 68 bonds of Tennessee from No. 5903 to 5970, the original of which is now of record in my office.

189 In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, [SEAL] affixed the Great Seal of the State of Tennessee, at the Department in the City of Nashville, this 18th day of August, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE,
190 *Davidson County.*

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said county, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such, and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nash-
191 ville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE,
Davidson County.

I, J. R. MCCANN, Clerk of the County Court of said county, do hereby certify, that John C. Ferris, Esq., whose genuine signature appears to the fore-
192 going certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said county, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

J. R. MCCANN,
Clerk.

COMPLAINANTS EXHIBIT No. 8. 193
W. H. D. L.—N. P.

MOBILE & OHIO RAILROAD COMPANY.

$100.000.

Received, Nashville, Oct. 11th, 1859, of Isham G. Harris, Governor of the State of Tennessee, one hundred coupon bonds of said State for one thousand dollars each, principal and interest payable in New York, bonds falling due 1st day of January, 194
1898, the first coupon falling due the first day of January, 1860, bonds numbered from 10,111 to 10,-210, both numbers inclusive.

Said bonds are issued on the fourth application of said company for aid upon a section of ten miles, being the sixty-eighth mile from the Kentucky line.

MILTON BROWN,
President Mobile & Ohio Railroad Company.

195

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Milton Brown, President Mobile & Ohio Railroad Company, for 100 bonds of the State of Tennessee from No 10,111 to 10,210 inclusive, the original of which is now on record in my office.

In testimony whereof I have hereunto subscribed my official signature, and, by order of the Governor, affixed the Great Seal of the State of 196
[SEAL.] Tennessee, at the Department in the city of Nashville, this 18th day of August, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify that JOHN C. FERRISS, Esq., whose genuine signature appears to the foregoing Certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of Law.

Witness my hand and seal of said Court, at office, this 18th day of August, 1879.

[SEAL.]

J. R. McCANN,
Clerk.

COMPLAINANT'S EXHIBIT No. 9. 201
W. H. D. L.—N. P.

MOBILE & OHIO RAILROAD COMPANY.

Received, Nashville, July 10th, 1860, of Isham G. Harris, Governor of the State of Tennessee, one hundred coupon bonds of said State for one thousand dollars each, principal and interest payable in New York. Said bonds falling due first day of January, 1898, first coupon falling due first day of January, 1861. 202

Said bonds are issued to the Mobile & Ohio Railroad Company, upon their fifth application for aid upon a section of ten miles. Said bonds are numbered from 11,545 to 11,644, both inclusive.

MILTON BROWN,
President and Agent
Mobile & Ohio R. R. Co.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of 203 the receipt of Milton Brown, President and Agent Mobile & Ohio Railroad Company, for one hundred bonds of the State of Tennessee, from No. 11,545 to 11,644, inclusive, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official Signature; and, by order of the Governor,
[L. S.] affixed the Great Seal of the State 204 of Tennessee, at the Department in the City of Nashville, this 18th day of August A. D., 1879.

CHAS. N. GIBBS,
Secretary of State.

205 STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said county, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such, and that said attestation is in due form of law and by the proper officer.

206 Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court of said county, do hereby certify, that John C. Ferris,
207 Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said county, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

J. R. McCANN,
208 *Clerk.*

IN THE CASE OF

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MISSISSIPPI & TENNESSEE RAILROAD COMPANY,

versus

THE MISSISSIPPI & TENNESSEE RAILROAD COMPANY *et al.*

209

210

IN THE UNITED STATES CIRCUIT COURT,

FOR THE WESTERN DISTRICT OF TENNESSEE.

I hereby certify that there were produced before me during the taking of the deposition of CALVIN AMORY STEVENS in this cause three (3) Tennessee 211
bond, each bond being for the principal sum of one thousand dollars, and bearing the impression of the Great Seal of the State of Tennessee on the face thereof.

A true and exact copy of one of said bonds is as follows:

COMPLAINANT'S EXHIBIT No. 10.

M. UNITED STATES OF AMERICA. M.

No. 2,511. B. 212

STATE OF TENNESSEE.

Know all men by these presents, that the State of Tennessee acknowledges to owe to
or order, one thousand dollars, lawful money of the United States, which sum the said State promises to pay in the City of New York, on the 1st day of

January, 1862, with interest at the rate of six per cent. per annum, payable semi annually, according to the tenor, and upon the presentation of the coupons thereto attached. For the performance of all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance and under the provisions of an Act of the General Assembly of said State, passed at its Session of 1851-2.

In witness whereof, I, Andrew Johnson, Governor of said State, have hereunto signed my name and caused the same to be countersigned by the Secretary of said State, and the Great Seal of said State to be hereto affixed, at Nashville, this 1st day of January, 1855.

ANDREW JOHNSON,
Governor.

W. B. A. RANNEY,
Secretary of State.

$1,000. $1,000.

Color, white.

The other two (2) of said bonds are of like tenor in all respects with the foregoing, except that they differ in their numbers, being numbered as follows: 2,535, 2,541.

All of said bonds are dated on the 1st day of January, 1855.

Nos. 2,511, 2,535, 2,541 are signed:

ANDREW JOHNSON,
Governor.

W. B. A. RANNEY,
Secretary of State.

Said bonds having thirty-three (33) coupons attached to each bond.

The last coupon falling due is in all respect except as hereinafter stated, similar and like unto the following true and exact copy thereof: 217

$30. $30.

The Treasurer of the State of Tennessee will pay the bearer thirty dollars, in the City of New York, on the first day of January, 1876, being the semi-annual interest then falling due on bond No. 2,511.

ARTH. R. CROZIER,
Comptroller. 218

All the coupons attached to bond numbered as aforesaid, are signed

ARTH. R. CROZIER,
Comptroller.

There are nine (9) overdue coupons upon each of the aforenumbered bonds, the first coupon thereof having fallen due on the 1st day of January, 1876. The other eight of said coupons fall due at intervals of six months from the date of the coupon above mentioned. 219

Bond No. 2511 is made payable to Anto. M. Del-Valle or bearer.

All the aforesaid bonds with the coupons attached thereto, were left by the witness, Calvin Amory Stevens, for inspection by me and the solicitor for the respondents then and there present, and were inspected by me and by him.

There endorsements on said bonds are as follows: 220
on bond No. 2511,

Registered under 9th Section of Funding Act, approved March 17, 1873, Jno. C. Burch, Comptroller, Chas. N. Gibbs, Secretary of State.... .....Audited Aug. 14, 1874
On Bond 2535 same..... " Nov. 19, 1873
" 2541 " ..... " Dec. 19, 1873

221 Bond 2511 also endorsed as follows:

"By virtue of power of attorney, recorded in the Office of the Register of the City and County of New York, Liber 10 of Powers of Attorney, p. 40 and for value received. I assign this bond to or bearer without recourse to me.

New York, March 17, 1866.

ANT. M. DELVALLE,
pr. ISNAGA DELVALLE,
Atty.

222

Attest:

JNO. A. HILLERY,
Notary Public,
N. Y. City.

WILLIAM H. DELANCEY,
Notary Public.

223

224

COMPLAINANT'S EXHIBIT NO. 11. 225
W. H. D. L.—N. P.

MISSISSIPPI & TENNESSEE R. R. Co.

$98,000.

Received of Andrew Johnson, Governor of the State of Tennessee, ninety-eight bonds of said State for one thousand dollars each, being from No. 2,495 to No. 2,552, including both these numbers, making fifty-eight bonds, and No. 2,853 to No. 2,891, including both these numbers, making forty bonds, in all ninety-eight bonds, all dated 1st January, 1855. falling due 1st January, 1892, and first coupon falling due 1st January, 1856, issued under the general improvement laws of 1852 3, and those amendatory thereof. 226

Nashville, July 24th, 1855.

F. M. WHITE,
President Memphis & Tennessee Railroad Co.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of F. M. White, President of Miss. & Tenn. Railroad Co. for 98 ninety-eigth bonds of Tennessee, from No. 2,495 to 2,552, and from No. 2,853 to No. 2,891, the original of which is now of record in my office. 227

In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, affixed the Great Seal of the State of Tennessee, at the Department in the City of Nashville, this 18th day of August, A. D. 1879. 228

[SEAL]

CHAS. N. GIBBS,
Secretary of State.

229 STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

230

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE }
Davidson County. }

I, J. R. MCCANN, Clerk of the Court of said
231 County, do hereby certify, that John C. Ferris, Esq., whose signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said county, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court
[SEAL.] at office, this 18th day of August,
232 1879.

J. R. McCANN.
Clerk.

COMPLAINANT'S EXHIBIT No. 12. 233
W. H. D. L.—N. P.

MOTHERAL.

Deposition of N. W. MOTHERAL, taken at Cleveland, Tennessee, on the 10th day of February, 1879, before a sub-committee of Investigation, composed of Senator Smith and Representative Driver.

Said witness being duly sworn, states:

Q. Please state your residence, your profession? 234

A. My residence is Cleveland, Tennessee. I am a minister of the gospel, of the Cumberland Presbyterian church.

Q. Did you know T. H. Calloway in his life-time, and did you hear a confession made by him before his death?

A. I knew him in his life-time, and he professed religion under my ministry and joined my church, and expressed great dissatisfaction with his connection with the railroad, as president, stating that 235 a man could not be a Christian and occupy his position, and declared his determination to resign his position. Mr. Calloway told of how he managed to get a certain bill through the legislature. I rather think it was the first Omnibus bill, but will not be certain of that, it may have been the bill to turn over the railroad stock to the Turnpike companies. He said he only liked one man to control it—he said he studied that man to find out his vices, and learned that it was women and whisky—he then 236 employed a prostitute (Beckey Higgins I think was her name), to get him drunk on wine, and keep him at her house until the vote was taken the next day, which she did, and the bill was passed. He told me at another time, just before his death, and Joseph Calloway, his son, reiterated the same thing, recently, that Major R. T. Wilson made a proposi-

237 tion in writing, to run down the stock of the road or water it and sell out to an English company, and thus cheat the stockholders out of their stock, which he said he rejected with indignation. Major Jackson did the same thing in a letter to Calloway. Mr. Calloway further told me that he had frequently employed David Nelson to assist him in getting his measure through the legislature, and that Nelson had applied to him for money, as pay for the same, in a way that was offensive to said Calloway. I
238 think he said he had given him a suit of clothes, and perhaps he had afterwards applied to him for money more than once, which made Calloway angry —as he was extorting it from him.

Q. Was Mr. Calloway in a state of sound mind when these statements were made, and up to his death?

A. Yes, sir; he was.

Q. Do you know anything of some letters touching these transactions, if so state all you may know
239 about it?

A. Thos. Calloway, junior, came to me last Sunday night and told me that Mr. Jesse Gaut and Mr. Mayfield had telegraphed to him, as attorneys of the railroad, to come to Cleveland and get some letters touching those railroad propositions—saying that they said his father's character was involved—and he asked my advice about the matter; I advised him to have nothing to do with it.

Q. Do you know anything of the disposition of
240 those papers?

A. I do not. I understand that Mrs. Julia Calloway gave them to Samuel Reese, Depot Agent, and he turned them over to C. M. McGhee.

N. W. Motheral.

COMPLAINANT'S EXHIBIT NO. 13. 241

W. H. D. L.—N. P.

GALLOWAY.

The deposition of M. C. Galloway, taken before the committee at Nashville, Feb. 7th, 1879.

The said witness being sworn deposed as follows:

Q. What is your connection with the *Memphis Appeal* newspaper? If so, how long have you been connected with it? 242

A. I am now one of the editors of that paper, and have been connected with it as editor since 1870.

Q. Were you interested in it as a stockholder or otherwise before 1870?

A. I was not.

Q. Do you own stock in it now or have you since 1870?

A. Yes sir, one-half interest now.

Q. Was Col. Dupree, now of Texas, connected with, and interested in, the paper, in 1872 or 1873, 243 or along about that time?

A. He was a stockholder in 1872, I think we bought him out in 1873, paying him $14,000 for his interest.

Q. You remember the Funding Act of 1873?

A. Yes, sir.

Q. Was any proposition made to you or to your associates in control of the paper, to give you or your firm the prospective profits on $50,000 of Tennessee bonds, realized from an expected rise in Ten- 244 nessee bonds, under the Funding Act, to get the influence of your paper in advocating its passage?

A. Never, sir.

Q. Was any proposition of this kind, or any one of like nature, character or form, made to you or your associates to secure the influence of your paper in support of that Act?

A. There were propositions to this effect, which after correspondence and negotiations failed.

Q. Who made these or such like propositions?

245 A. They were made through Col. L. J. Dupree, to the *Appeal* Publishing Company, but I know not who made them.

Q. Did you have individual propositions made to you, in this regard?

A. I did not; I had an individual correspondence on the subject, which failed.

Q. Col., if you have no objections, will you please state with whom you had these individual negotiations, or this individual correspondence?

246 A. If I am not compelled I would like not to mention the man's name. It was a private letter and I dislike to expose privatecorrespondence; the letter I wrote to the gentleman or the letter received was accidently found at the Maxwell House, and I desire to say that personally I have no objection to its publication.

Q. Col., if you have no objection, will you please, without giving names if you so desire, state the amount or amounts that you understood, to be of-

247 fered to the *Appeal* Company, or to you individually in reference to the Funding Act?

A. Never a dollar; I never heard of a Funding ring except through the *Memphis Avalanche*; that paper published an article or articles reflecting upon the integrity of Gov. Brown, and it, after or about the time before Gov. Brown retired, upon his demand for an unqualified retraction of its article or articles, did so, and published an article highly complimentary to Gov. Brown. He went to Browns-

248 ville, and sent from there a letter, by an envoy extraordinary and this brought about the retraction and a complimentary editorial as to his integrity. Kellar wrote a letter disclaiming responsibility for the articles.

Q. The *Memphis Appeal* did support the Funding Act?

A. Yes, sir, it did, because Brown and his oppo-

nent during the canvass endorsed it, and Brown's 249
triumphant election we regarded as making it the Democratic policy, and hence we supported it, and if times now were like they were then, we still think it would be the best policy for the party in the State.

Q. A receipt has been published or a copy of a receipt from you or the *Appeal* Company, to a certain railroad president or company, for a considerable sum of money; if you have no objection, please give the committee an explanation of it? 250

A. In reply to this question, I will say that pending the Gubernatorial canvass of 1870, the *Appeal* made a bitter onslaught on the bogus bonds of the State, especially the Mineral Home bonds, and the Brownlow administration. In this policy, we had three objects: the first was to save the tax-paying people from the taxes imposed to pay these bogus bonds. Second, to help elect Governor Brown, and third, to injure the Republican party. This bitter war, we continued during the Gubernatorial canvass 251
in 1870, and in 1871, after Brown's election. In September, 1871, Maj. M. J. Wicks addressed a note to me, to meet him at his bank. In response to his invitation I repaired to his bank; there I found M. J. Wicks, President of the Memphis & Charleston Railroad, and Wm. B. Greenlaw, President of the Little Rock Railroad. Maj. Wicks took from his vest pocket an editorial in regard to the liabilities of the State, and asked me who was the writer of said editorial; I informed him that I wrote 252
it. He said that that article was worth $50,000 to his road. The legislature had passed an Act allowing the railroads to retire their indebtedness, and then I got an insight into the whole thing. Maj. Wicks and W. B. Greenlaw insisted that I continue the *Appeal* on the same line of policy, and as it made hundreds of thousands of dollars for them and

253 the other roads, they would make it to my interest. Mr. Wicks voluntarily said he would give the *Appeal* $5,000 for every depreciation of five per cent. in the bonds. With this *stimulus* the *Appeal*, made a furious attack upon the bogus bonds, and continued to depress the bonds until the *Appeal* made $10,000 under Wick's voluntary contract with it, and come within a quarter per cent. of making $15,000. When payment was demanded, Wicks requested me to appear before the Directors of the
254 Memphis & Charleston Railroad, which I did. After I got there, we had nothing in a tangible shape to present to the Board, and Wicks made out an account embracing the services of the *Appeal* and its editors under the contract. Wicks paid the account after me agreeing to deduct $2,500.

Q. What about your enthusiastic support of Gov. Brown?

A. That support was prompted by two reasons: first, I regard him as one of the best and ablest
255 Governors Tennessee ever had; and second, is that I know him, in an experience of forty years with public men, to be one of the noblest men that ever lived.

M. C. GALLAWAY.

256

RESPONDENT'S EXHIBIT No. 1. 257
W. H. D. L.—N. P.

NEW YORK, Feb. 15th, 1877.

To His Excellency James D. Porter,
Governor of the State of Tennessee:

SIR: On the 26th of December last, we had the honor of addressing to your Excellency a letter on the disordered condition of the public debt of the State of Tennessee, of which we are owners and the representatives of owners of a large amount, 258 and of conveying to you in same an expression of our confidence and belief that a permanent adjustment of the debt on a basis equitable to the holders of it and honorable to the State was practicable, begging that your Excellency would recommend to the Legislature to appoint a commission to come to this city and confer with the creditors of Tennessee, with a view of bringing about such an adjustment.

We have the honor to acknowledge the receipt of communications to us severally addressed by 259 your Excellency, accompanied by a resolution of the Legislature of Tennessee, approved on 27th January, ult., in which the holders of the public debt of the State are invited to submit to the General Assembly, through your Excellency, propositions for an adjustment of said debt, and at the same time to most respectfully express to your Excellency, and through you to the Legislature and people of Tennessee, our great regret and disappointment that the Legislature did not think it ex- 260 pedient to appoint a commission to come to New York, to confer with the creditors of the State for the purpose mentioned, because such a conference we still believe would have developed a plan of adjustment that, while doing equity to the creditors of Tennessee, would, by bringing her revenues and finances into harmonious and easy working

order, restore her credit, and again place it firmly on the high and solid ground it once occupied, offer encouragement to capital to seek employment within her borders in the development of her unsurpassed natural resources, and result in the greatest good to the people of the State generally, enabling them to transmit to posterity, together with the good name which they inherited, a heritage far richer than had come down to them from their fathers.

We have carefully considered the liabilities and resources of Tennessee.

We know that her great wealth of mine, field, and forest are only in the infancy of development.

We know, also, how much the future development of the vast, but now comparatively latent resources of the State depends upon a restoration of her credit and the re-establishing of her financial system on a sound basis, and knowing, moreover, that the public creditors of the State would be benefited, in common with the people of Tennessee, by a restoration of her credit, and by giving her a healthy fiscal system, we beg leave to submit to your Excellency, and through you to the Legislature and people of Tennessee, the following propositions as to what can be done by the people of Tennessee, with the co-operation of their public creditors, for the immediate adjustment of their public debt, and for its ultimate extinguishment in an easy, gradual, and feasible way—a way which, if adopted, we feel very sure we hazard nothing in saying will be productive of the most beneficent results to the people of Tennessee.

It will be observed how essential to the success of the plan we submit for present adjustment and ultimate extinguishment of the State debt, will be the cordial co-operation of both debtor and creditor, and to what extent we propose that the public creditors of Tennessee shall contribute to its success.

We propose : 265

1. That the revenue laws of the State shall be amended so that the collection of taxes may be assured at the time or times when they become due and that at the smallest possible cost to the tax-payer.

2. That the reforms proposed and recommended to the Legislature by your Excellency in regard to the cost of county criminal prosecutions be enacted into a law. 266

3. That the expenses of the State Government be reduced to as low figures as is consistent with the maintenance of its dignity.

4. That the present rate of taxation be maintained, and that the other sources of revenue be not diminished.

5. That the State levy annually a special tax of one mill on the dollar of taxable property, the 267 proceeds of which, in every year, together with any surplus revenue, shall be used in the purchase, cancellation, and destruction or the new issue of bonds which it is proposed herein to issue for existing bonds and past due coupons of July 1st, 1877.

6. That the Legislature pass a law authorizing the funding of all outstanding bonds of the State, of all past-due coupons thereon, and of the coupons 268 which will fall due on July 1st, 1877, into new bonds of the State bearing date July 1st, 1877, and having fifty years to run to maturity, bearing interest for a period of five years from their date at the rate of three (3) per cent. per annum ; for a second period of five years thereafter interest at the rate of four (4) per cent. per annum ; for a period

of five years from the termination of the last mentioned period interest at the rate of five (5) per cent. per annum; and thereafter, until maturity and payment, interest at the rate of six (6) per cent. per annum. Interest upon each bond to be payable semi-annually on January 1st, and July 1st, in every year from and after its date, and the coupons evidencing it to be receiving by the State for all taxes and dues payable to the State; and bonds to be for $100, $500, and $1,000 each.

The debt of the State, as may be readily ascertained, will be within her control and easy power to manage and protect from the start, if, as we sincerely hope may be the case, the plan herein outlined is availed of, and we may add that our aim has been to make it within the easy power of the people of Tennessee to avail of it.

As will be perceived by your Excellency, the Legislature and people of Tennessee, the public creditors of Tennessee, in acquiescing in this proposed plan of co-operation between them and the people of Tennessee for restoring the credit of the State, and ultimately extinguishing her public debt, will voluntarily relinquish about $7,000,000 of their claims against Tennessee—an amount equal to about one-third of the entire amount of her public debt.

On the other hand, we propose that the people of Tennessee adopt the easiest and simplest mode which we can conceive of for the ultimate extinguishment of their entire public debt, a mode which, while it will only produce the very moderate annual sum of $268,000 at the present low valuation of property, will, by its silent and sure work, pay off the debt completely, while, by its operation, it will so reduce the amount upon which, under this plan, interest will require to be paid, that at the expiry of each period for an advance in the rate, the reduced amount for which interest will have to be

provided, and the certain increase in the value of 273
property, will work togther to make the present rate of taxation quite sufficient to meet all demands upon the State.

During the first fifteen years of the currency of the proposed new issue of bonds we estimate that the proposed special tax for its ultimate payment will pay off between $5,000,000 and $6,000,000 in bonds, allowing twenty per cent. of the tax for its collection and the expenses connected with buying bonds with the proceeds. 274

When it is considered that this can be accomplished at so small an annual charge to the people of Tennessee, and that such certain beneficial results to them are sure to follow, we have the greatest confidence that their loyalty to Tennessee, their determination to preserve and perpetuate her honor and good name, will be sufficient to induce them to make the manly effort to that end of unitedly raising a one-mill tax on their property annually.

We are quite well aware of the partial failure of 275
crops in Tennessee in the years 1873 and 1874, and of the depressed condition of business, and of all industries in the State, but throughout the country their exists the same depression — stagnation.

In full recognition of this depression and stagnation, which there is every reason for believing will soon give place to better times, we have in the plan herein submitted for a rearrangement of the finances of Tennessee, made her obligations within 276
her means and evident ability to meet now.

With the existing rate of taxation, and the proposed special tax for the extinguishment of the debt, which together make a five-mill tax, it may not be improper to compare the rate of taxation in the States which border on Tennessee :

277

	Mills.
In Arkansas the rate is	10
In Mississippi the rate is	6½
In Alabama the rate is	7
In Georgia the rate is	5
In North Carolina the rate is	3 3/10
In South Carolina the rate is	12
In Virginia the rate is	5
In Kentucky the rate is	4½

278 In conclusion, we beg to express to your Excellency, and through you to the Legislature and people of the great State of Tennessee, our confidence that all will unite with us in this effort to make it possible to avail of the proposed co-operation of the creditors of Tennessee to bring about so desirable a result as the re-establishment of her credit on a plan so favorable as we have herein outlined, and we have the honor to be, your obedient servants,

279 GEORGE SMITH, of London, England,
by GEDDES & SMITH, Agents, &c.
BROWN BROS. & Co., Agents.
DREXEL, MORGAN & Co., Agents.
E. D. MORGAN & Co., Agents and owners.
JAMES G. KING'S SONS,
as agents for bondholders.
WARD CAMPBELL & Co., agents.
G. W. STANTON, JR.
P. GEDDES.

280 We concur in the foregoing:

CALVIN STEVENS,
by C. AMORY STEVENS, Attorney.
J. V. CLARK, President, Chicago,
per THOS. G. ROBINSON.
WM. G. CREAMER, No. 96 John Street.
CHAS. S. HINE, New York.

A. ISELIN & Co., as Attorneys, New York. 281
W. R. JENKINS, New York.
MRS. JOSEPHINE S. NEWCOMB,
by H. POMEROY, No. 54 Broad street.
GEORGE WATSON, Chicago.
per JAS. H. SMITH.
JNO. H. MACY, President.

HENRY E. JOHNSTON,
JOHNSON BANKHEAD & Co., Agents,
THOMAS F. ANDREWS,
M. ABRAMS, 282
WILLIAM DE GORY, } Baltimore.
SAMUEL L. PETERS,
WILSON, COLSTON & Co., Ag'ts,
JOHN S. GITTINGS,

RESPONDENT'S EXHIBIT No. 2.
W. H. D. L., N. P.

283

NEW YORK, December 15, '77.

GOV. JAS. D. PORTER, Nashville, Tenn.

Dear Sir:—I telegraphed you December 11th, and again to-day. I feel it my duty to further say: That while I fully recognize and sympathize with the financial distress of Tenn., yet I cannot entirely disregard my own embarrassment and that of my fellow bondholders.

I represent one of the many estates which purchased Tenn. bonds at a time when her credit stood 284
high, and none feared that she would do aught to lower it. We now offer liberally to share half of the loss. Speaking for one (and I believe that I express the sentiment of the majority) I cannot discount my just claim at better than 50 and 6 per cent. (fifty per cent. of old bonds and interest due changeable for new bonds bearing six per cent. in

terest) nor can I yet believe that the Legislature of Tenn. will force her creditors (who have offered so liberally) to take less.

Allow me to call your attention to a fact of which you may not be aware. John T. McKinnon speaks for (if he has not already overstepped his instructions) a self-appointed syndicate. It is well known that the syndicate own few, if any, of the bonds. They do not represent the bondholders. In fact the bondholders denounce their interference and mercenary motives. This self-constituted syndicate does not seek only to improve and promote the best interests of the South. Its sympathy would seem to be quite as much with itself. With a subscribed capital of only ten thousand dollars, it aims to increase it by levying a regular broker's commission on the already over-burdened bondholders.

As a sovereign State your unfortunate creditors appeal to you to act as becomes your dignified position—to deal directly with bondholders, to treat as discreditable impertinence, this interference of a self-appointed syndicate, that speaks without the authority of your creditors, and whose misrepresentations and mercenary motives they generally denounce.

Very respectfully,
THE ESTATE OF CALVIN STEVENS,
C. AMORY STEVENS,
Trustee.

Care of
H. T. MORGAN & Co.,
35 William St., New York.

RESPONDENT'S EXHIBIT No. 3. 289

W. H. D. L., N. P.

December 11, 1877.

GOVERNOR JAS. D. PORTER, Nashville, Tennessee:

I am a large holder of Tennessee bonds, which have been held for years strictly for investment account. I was a signer of the former petition sent you through the Committee of Arbitration, and while I would prefer to have that proposition accepted, yet if it would require a revenue bill that is 290
deemed by the Legislature to be higher than the State can afford to pay without seriously retarding the prosperity of the people, I prefer to change the original offer, and hereby do change it. I purpose to take fifty cents on the dollar.

I think this dispatch represents the sentiment of most of the investment holders. They recognize the embarrassed condition of the State, growing out of the war, and are willing to meet the situation 291
in a spirit of liberality, and now ask the Legislature, through your Excellency, to reciprocate this feeling, and make a settlement without further delay. Please submit this to the Legislature for its action.

THE ESTATE OF CALVIN STEVENS.

C. AMORY STEVENS,
Trustee.

292

293 RESPONDENT'S EXHIBIT No. 4.

W. H. D. L.—N. P.

OFFICE OF COMMITTEE OF
TENNESSEE BONDHOLDERS,
No. 31 Nassau Street.

P. O. Box 936. NEW YORK, May 17, 1879.

To the Holders of Tennessee Bonds:

In our last circular we informed you that the com-
294 mittee was considering the best means for enforcing our first mortgage liens against the railroads in Tennessee. After full deliberation, with advice of counsel, and with the approval of the following prominent houses interested: Brown Brothers & Co., Maitland, Phelps & Co., Ward, Campbell & Co.; and of the Presidents of the Seaman's Saving Bank, and the Globe Mutual Life Insurance Co. of New York; and of large individual holders in New York, Baltimore, Philadelphia and Chicago, we
295 have decided to adopt the suits lately instituted by Mr. C. Amory Stevens. Prompt action on the part of the bondholders will enable us to bring these suits to trial during the ensuing summer.

It may be well for us to give some of the considerations that make us confident of a successful enforcement of the lien conferred on our bonds by the distinct language of the Tennessee Statutes. While Tennessee bonds of the new issue were being offered for sale in behalf of the railroads of the
296 State, S. Watson, "agent for the State of Tennessee," addressed the following argument to the public, which was printed in pamphlet form in 1868:

"The important question for the bondholders now "is, What security have I for the payment of the "principal and interest of my bond? The State "debt proper is only about four millions. The "railroads and all their rolling stock are mortgaged

"to the State to secure the *payment of bonds* 297
"*loaned*. This mortgage, as bondholders must
"know, ensures to their benefit. For the payment
"of twenty-nine million bonds, which will be the
"entire amount of bonds issued to the roads, includ-
"ing those that may be issued under the recent Act
"of the Legislature, *the bondholders have as security*
"roads which, when completed, will be nearly two
"thousand miles in lenth, and which will be worth
"fully seventy millon dollars. In addition to that,
"they have the whole resources of the State sol- 298
"emnly pledged to them."

Again, in 1868, when the Legislature of Tennessee sought to impair our securities, Gov. Brownlow, then chief executive, sent a message to that body remonstrating against the proposed measures in the following emphatic language:

"The State, in point of honor and fact, holds the
"lien in a fiduciary capacity. She holds it *in trust*
"for the benefit of the bondholders. She honor-
"ably has no right to abandon it or surrender it to 299
"the companies. She ought not to prove faithless
"in this *trust*, but maintain and execute it as the
"bondholders understood it and as the people of
"the State understood it. The bondholders are in-
"terested in these resources to pay the bonds they
"hold, and the people are interested in them to see
"that they are not to be taxed to pay interest or
"principal of bonds for which the railroads are
"pledged by the terms of the law."

300

The assurance of our rightful legal claims against the railroads is strongly fortified by the following facts:

In April, 1878, the committee addressed a circular to the bondholders notifying them that it was about to enforce this lien. We petitioned to be heard in the Mobile and Ohio case then pending on

appeal before the Supreme Court of the United States. In that suit the question whether or not the holders of Tennessee bonds had a first mortgage lien upon railroads in that State, was clearly presented. The cause was fully argued by several counsel for the railroad company as well as by our counsel, and the Court took the case under advisement. Some time after, while we were confidently awaiting a decision in our favor, we were surprised to learn that the railroad company had settled the case with the party to the record in that suit—that stipulations had been filed in the office of the Clerk of the Supreme Court—that copies had been sent to the several Judges of the Supreme Court—and, in short, that everything had been done by the railroad officials which it was possible to do to forestall a decision in the case. As we were not actual parties to that cause, we could not control the matter in any way so as to prevent a settlement. But, surely, we could not require any stronger evidence that the railroad companies were convinced of their own defeat. Otherwise they would have gladly welcomed a decision which would have relieved their property from the burden of this lien, and would have done everything in their power to have secured a final adjudication in their favor instead of preventing a decision.

We call your special attention to the accompanying opinion of Mr. Charles O'Conor. It was given under a deep sense of moral responsibility in course of advice sought by a bondholder to enable him to determine whether or not to embark in a litigation against the railroads. A letter signed by Messrs. Evarts, Southmayd & Choate, in which it is stated that they have not time to prepare an opinion against us, has been circulated in the interest of the railroads. That letter bases its conclusions on the Minnesota case, which, we are informed by Mr.

O'Conor, bears in our favor so far as it is at all applicable to the Tennessee case. It is sufficient to add that Mr. Southmayd, of the above firm, urged before the Supreme Court that same decision in the Minnesota case as a precedent in favor of his clients; but the effect was not convincing enough to induce those clients to refrain from a settlement of the case as before stated. 305

We append a list of roads on which Tennessee State bonds are first mortgage liens, and the amount of bonds outstanding against each road. 306

East Tennessee, Virginia & Georgia Railroad, leased lines and branches:	
East Tennessee & Georgia Railroad .	$ 614,000
East Tennessee & Virginia Railroad	1,218,000
Memphis & Charleston Railroad .	830,000
Cincinnati, Cumberland Gap and Charleston Railroad, ...	350,000
East Tennessee & Western North Carolina Railroad, ...	34,000 307
Total, . .	$3,036,000

Louisville & Nashville Railroad Company, and purchased and leased lines:	
Main Line, ...	$298,000
Memphis, Clarksville & Louisville Railroad, ...	791,000
Memphis & Ohio Railroad, . .	1,176,000
Tenn. & Ala. R. R., Cent. Southern R. R., Nash & D. R. R.,	468,000 362,000 308
St. Louis & South-Eastern Railroad Company, on account of Edgefield & Kentucky Railroad, ...	645,000
Total, . .	$3,740,000

309 Nashville, Chattanooga & St. Louis Lines:

Nashville & Chattanooga,	$114,000
Nashville & North-Western,	1,385,000
Winchester & Alabama,	457,000
McMinnville & Manchester,	356,000
Total,	$2,312,000
Mobile & Ohio Railroad,	953,000
New Orleans, St. Louis & Chicago Railroad on account Mississippi Central and Tennessee Railroad,	480,000
Knoxville & Ohio Railroad Company on account of Knoxville & Kentucky Railroad,	514,000
The above amounts and some issues to smaller roads make an aggregate of railroad issues made by the State of Tennessee, and which are still outstanding,	11,647,000
On which there is accrued 23 per cent. interest,	2,678,810
Total due,	$14,325,710

310

311

Bondholders will please note that "New" bonds, issued to Tennessee railroads, and "Funding Series" bonds, not included in the above list, issued in payment of interest which accrued on railroad bonds under the Funding Acts of 1866, 1868 and 1873, are also statutory liens upon the railroads.

The members of the committee are owners to a 312 large amount of bonds that are not liens on the railroads, which they do not propose to fund into the 50 and 4 per cent. bonds offered. They believe that the enforcement of the railroad liens will bring about a much better settlement than is now proposed. It is our duty to inform you that the legality of the proposed issue of the new 4 per cent compromise bonds is already questioned in Tennessee,

for want of sufficient acceptances to authorize the 313
submission of the proposed settlement to popular vote, as required by the Act of the last General Assembly.

Holders of North Carolina State bonds, issued in aid of the North Carolina Railroad Company, will recollect how that State made an unsuccessful attempt to deprive such bondholders of the lien originally intended for their security. A like attempt in the State of Indiana, in the case of the Wabash and 314
Erie Canal, was also unsuccessful, and the lien decided in favor of the bondholders.

Bondholders wishing to secure the benefits resulting from this litigation can do so on the following conditions, to wit: by depositing with the committee five dollars per lien bond in cash, and one past due coupon from each bond of that description. This will be required to defray the necessary costs and expenses of the litigation. In no event will the 315
bondholders be called upon for any further assessment, nor do they incur any personal liability by uniting in this plan. Should any surplus funds remain in the hands of the committee after all expenditures have been provided for, the same will be returned to bondholders *pro rata*. Those who do not comply with the aforesaid conditions will be excluded from the benefits derived from the action of the committee. A certificate will be issued to each assenting bond, entitling it to any and all advan- 316
tages resulting from these legal proceedings, and specifying the railroad company bound for the payment of the bond. An arrangement for calling these certificated bonds for dealings in them on the New York Stock Exchange will be made.

When it is considered that the enforcement of

these liens should make the great mass of the internal improvement bonds worth par and accrued interest, or 123 per cent., the advisability of the course which we have adopted cannot be reasonably doubted. Your signature to the enclosed assent, stating color, number and serial letter of each of your bonds is requested before June 10th. Upon receipt by the committee of the assents of a sufficient number of bonds, the holders will be notified of the issue of the certificates to be attached to the lien bonds. We propose to engage as counsel Chas. O'Conor and E. L. Andrews, of New York, and George Hoadly, of Cincinnati, to be assisted by competent counsel at Memphis, Nashville, Knoxville and Louisville.

Committee of Tennessee Bondholders.

EUGENE KELLY,
OF EUGENE KELLY & CO.

JOHN T. TERRY,
OF E. D. MORGAN & CO.

JAS. G. K. DUER,
OF JAMES G. KING'S SONS.

PETER GEDDES,
OF GEDDES & SMITH.

R. S. MORGAN,
OF 107 EAST 29TH ST., N. Y.

C. AMORY STEVENS,
Treasurer.

THOMAS G. ROBINSON,
Secretary.

RESPONDENT'S EXHIBIT No. 5. 321

W. H.D. L., N. P.

NEW YORK, Feb. 23d, 1877.

His Excellency,

JAMES D. PORTER,

Governor of Tennessee:

SIR: We beg leave to call your attention to the enclosed telegram to the *New York Herald*, from its Nashville correspondent, cut from this morning's issue of the *Herald*, and to confirm our dispatch to 322
you of this morning by telegraph in relation thereto, as follows:

"Proposition from large and influential New "York and Baltimore bondholders expressed to you "on Wednesday, and should be received to-day. "Bondholders here know nothing whatever of a "meeting or of resolutions reported in *Herald* to- "day as having been sent to you, and by you trans- "mitted to legislature, with a special message.

"This may be a movement designed to destroy or 323
"embarrass any proper adjustment."

No meeting of bondholders of Tennessee, so far as we are aware or can ascertain, has either been called or held in this city. Neither have we heard at any time of a purpose to call or hold such a meeting, nor of a purpose or desire on the part of real holders of Tennessee bonds to take any action whatever, outside of what has been taken through and in the communication which we, with others had the honor to address to you under date the 15th current. It could 324
hardly be possible to call or hold a meeting here of Tennessee bondholders without our knowing or hearing about it. Such being the case, we thought it our duty to telegraph to your Excellency as we did this forenoon. It occurred to us that possibly an attempt to mislead your Excellency and the people of Tennessee as to the sentiments and wishes of the

325 real holders of the indebtedness of the State had been made, akin to the attempt made last year to create a false impression, through a letter to the State Treasurer, to which the name of one of the Astors had been forged.

The debtors of the State, with all of which she has been extremely liberal, even to the injury of her own credit many here believe, are supposed to be antagonistic to the consummation of any plan for the restoration of Tennessee credit now, the com-
326 plete prostration of which, it is supposed, would be for their immediate pecuniary advantage. This view, if entertained by any of the debtors of the State, is unsound. For, with every decline in the credit of the State, their credit inevitably suffers.

But, to remove this cause of a real or apparent antagonism between the debtors and creditors of the State, and also to remove—which is of immediate and great importance—an obstacle which is calculated to prevent or, at least, hinder the people of
327 Tennessee and their public creditors from coming to an agreement with respect to what each should do to restore the credit of the State, and place it on a solid basis, we would respectfully suggest to your Excellency that the debtors of the State be required, within a reasonable time, say by or before July 1st, 1877, to pay off every obligation due from them to the State as now they may do, after which time only such advances as were specifically made to each to be receivable in payment or cash; this is to apply to
328 principal and interest.

We submit to your Excellency whether there would be any hardship or injustice in requiring this, and assure you that the creditors of the State would regard such a step as one taken in the right direction; and

We remain
Your Excellency's Ob't Serv'ts,
GEDDES & SMITH.
E. D. MORGAN & CO.

The views above given, we beg to add, are for your 329
own personal consideration.

G. & S.

(Private.) NEW YORK, Aug. 1, 1877.

Hon. JAMES L. GAINES,
Comptroller,
Nashville.

Dear Sir:—I think that I may now safely say to you confidentially that the parties in interest will be prepared to pay off the debts of the Mississippi 330
Central to your State just as soon as it is safe for them to do so.

I was amused when I read in the American newspaper the other day the very brief notice of the payment of the debt of the Memphis and Charleston road to the State which it published. A stranger would conclude that it was published solely to account for your being in New York, about which the public might be concerned, to assure the people of 331
Tennessee that you were not here to pay off the State debt, or anything of that kind.

I have not yet heard from Mr. Smith, and am therefore not able to indicate what view he may take of the conditions upon which Governor Porter says he will call an extra session of the Legislature. I have, however, not changed my own views as to what should be done, but I am more firmly convinced than ever that the proposition of the bondholders should be accepted, or one its equivalent, 332
which I think might be gotten up, offering to settle at say 75 per cent. of principal and interest in 6 per cent bonds, coupons receivable for all taxes and dues to the State. If any hope were held out that a settlement can be effected at the equivalent of our proposition, say 75c., I would do my best to get all the principal bondholders to make a proposition to settle at that, and I think that with careful handling it

333 could be carried. Of course there are always some who hold back, but I think that the great majority would take 75 per cent. under the name of the equivalent of their proposition already made.

The debts of the railroads to the State may now be regarded as practically settled. What remains is simply a question between debtor and creditor.

Freed from the complications which grew out of these railroad debts the discussion of the debt question will be very clear and simple henceforward.

334 If a few of you men of influence and character would unite in an effort to bring about a compromise on the basis of 75 per cent. I think it could be effected satisfactorily to all, while it is very doubtful if an acquiesced in settlement at a lower figure would ever be regarded as other than a forced one by the public and the bondholders.

The intervention of the so-called arbiters of the Clearing House was the most unfortunate thing that could have happened.

335 Personally I have worked hard to save the remnant of Tennessee's once good credit, and I make this last effort to complete the job. If it fails, let it be so. Posterity will ever regret a blunder made now.

If you think so advisable you may convey to the Governor at your convenience the substance of what I have said, and let me know what he may have to say in reply.

336 Very truly yours.

P. GEDDES,

P. O. Box 936.

85

NEW YORK, Aug. 23, 1877. 337

JAMES L. GAINES, Esq.,
Comptroller.

Dear Sir:—I duly received your esteemed favor of the 8th current.

Since then I learn that the Mississippi and Tennessee Railroad Company have voted to pay off their debt to Tennessee. This practically settles up all advances made by the State to railroad companies, 338
and reduces the whole State debt question to one between the people of Tennessee and the investors in their public debt. What the latter will agree to do I cannot say. They may or may not adhere to their proposition of last February.

If the people of Tennesseee under any circumstances are liable to do anything disgraceful in regard to their public debt, or permit anything of that kind to be done, of which you seem to entertain fears, should a settlement not be come to this year, and 339
the debt question become one of the issues in the State canvas of next summer, the inquiry forces itself upon the bondholders, of how much value would the reduced debt of such a people be to the holders of it?

This is a very serious question in view of the fears you express, and of what I will now only characterize as the extraordinary legislation of last winter. I shall be happy to hear from you in reply at your convenience. 340

Mr. Smith has been travelling since the beginning of July, and hence we do not hear from him.

I am,
Very truly yours,
P. GEDDES,
P. O. Box 936.

341 (Private.) NEW YORK, August 27, 1877.

HON. JAMES L. GAINES,
Nashville.

My Dear Sir:—I have just had an interview with Mr. Osborne, who reports that in thirty days the parties in whose interest the Mississippi Central was bought in the other day will receive a confirmation of their purchase. It is quite well understood
342 here that so soon as they can do so with safety, they will pay off the lien of Tennessee on the Miss. Central, and that they now think they can safely pay it off sixty days hence.

There is thus little doubt that the last of Tennessee's advances to the railroads within her borders will be paid off early in the fall, thus freeing her and her creditors too, for that matter, from a very troublesome disorder.

Although you do not in your note of the 8th cur-
343 rent give much reason to hope that a settlement of Tennessee's debt on any other than the Coe Committee's plan is now practicable, I still cling to the belief that the honest citizens of Tennessee who must be still in the majority would much prefer to pay the State debt *in full*, if some plan were submitted which would make it clearly possible for them to do so.

The outstanding bonds of Tennessee are mainly held by investors, by trustees and Trust Institu-
344 tions. The "margins" of speculators in and out of Wall street have long ago disappeared, and the bonds upon which they were held been sold.

Now, investors, and parties, and institutions holding in trust prefer much any reasonable reduction of the rate of interest their investments will produce to a reduction of the principal.

For the past four years they have been receiving

lower rates of interest and smaller dividends on 345
their investments than they have been accustomed
to. Many of them, judging by the large subscrip-
tions to government four per cents. recently, have
come apparently to the conclusion that lower rates
of interest than formerly prevailed will hereafter
permanently prevail. This is the mood in which
they now appear to me to be, and it has suggested
the idea that advantage might possibly be taken of
so favorable a time and circumstances by the
friends of Tennessee to bring about a compromise 346
of the rate of interest on her debt which wonld en-
able her with ease to pay it all off.

I will not discuss her ability to pay her debt, but will assume it and pass on to my suggestion, which is as follows:

The State to issue new bonds for the principal and past due interest of her existing bonds, to bear interest at 4 (four) per cent. per annum, payable semi-annually, January 1 and July 1, in each year, coupons to be attached to the bonds representing 347
each payment of interest, to be receivable by the State for all taxes and dues to the State, and to be free from taxation of any kind in the State. The bonds themselves to be payable fifty or one hundred years hence, and redeemable by the State at any time after six month's notice that the State is prepared to pay them.

The bondholders of Tennessee may object to making such a proposition of compromise; but if I get from you and the Governor encouragement that if 348
such a proposition were made by the holders of more than half the debt, it would be accepted, I will exert myself with Mr. George Smith and other well known large holders to make it.

Firmly convinced as I am that a settlement in full, if by any possibility it can be accomplished, will be of immense present and future advantage to

Tennessee and Tennesseeans, I hope that you will induce Governor Porter and the other friends of State credit to give my suggestion careful consideration.

I do not dare to mention it to any one yet, but will set the wheels in motion if hope of acceptance is held out, and will, if necessary, go to Nashville for the purpose of an interview with the Governor and yourself.

If the friends of Tennessee in Tennessee will extend to her a helping hand, I think that she can still be restored and her honest pride saved.

Let me hear from you on receipt and write further afterward.

Truly yours,

P. GEDDES.

NEW YORK, Aug. 29, 1877.

HON. JAMES L. GAINES,

Nashville, Tenn.:

My Dear Sir:—I thank you for your favor of 25th current, and for the information and suggestion therein communicated.

Seeing by the morning papers that the Governors were to meet yesterday at the Continental Hotel, Philadelphia, I telegraphed to Governor Porter there asking him where a letter would reach him today, and after hearing from him wrote him with a copy of my last letter to you, asking him to let me have the benefit of his views thereon in advance of his arrival here, and saying that if agreeable to him I would with pleasure call upon him when he comes to New York.

In case Tennessee wants to pay off her debt it will be of great advantage to her to arrange for a low rate of interest on it. Bonds bearing a low rate of interest can be with greater ease or at lower cost

bought for a sinking fund than can bonds bearing 353
full rates.

This is a point I had in view when we made our proposition of compromise, and one which I hope will have some weight yet with you.

Yours truly,

P. GEDDES.

354

RESPONDENT'S EXHIBIT No. 6.

W. H. D. L., N. P.

OFFICE OF JOHN B MANING,)
14 Wall Street. (355

Member of the)
New York Stock Exchange.)

NEW YORK, Jan'y 25, 1878.

HIS EXCELLENCY JAMES D. PORTER,

Governor of Tennessee,

Nashville, Tenn.

356

SIR:

Your valued favor of the 19th came duly to hand. By this mail Mr. C. Amory Stevens forwards me a reply to the letter received from you; and covers my views of the situation entirely, and I accordingly have endorsed it.

My telegram to you offering to accept the fifty per

cent. compromise was sent with the best possible intentions, and would not have been sent at all had I not been informed, by a well-posted party here, that the sixty per cent. proposition had fallen through.

I regret exceedingly that any misconstruction should have been put on my motive in doing so. I had consulted with clients who were anxious to have a settlement with the State, and they concurred with me that as long as the sixty per cent. compromise had failed the best to do was to offer to accept fifty per cent. This has been rejected by the legislature, and of course, is not now binding on the bondholders.

Very respectfully,
JOHN B. MANNING.

91

RESPONDENT'S EXHIBIT NO. 7. 361

(W. H. D. L., N. P.)

DISCUSSIONS

RESPECTING

The Tennessee State Debt 362

BETWEEN THE

COMMITTEE OF TENNESSEE LEGISLATURE

AND

COMMITTEE OF ARBITRATION,

In the City of New York, March 8, 1877,

AND 363

THE AWARD OF THE ARBITRATORS.

STENOGRAPHIC REPORT.

THE TENNESSEE STATE DEBT.

364

365 MEETING OF

COMMITTEE OF TENNESSEE LEGISLATURE

AND

COMMITTEE OF ARBITRATION.

March 8, 1877.

366 In pursuance of a resolution passed on Thursday, January 25th, 1877, at a meeting held at the Clearing House in New York City, George S. Coe, President of American Exchange National Bank, N. Y.; J. D. Vermilye, President Merchants' National Bank, N. Y.; B. B. Sherman, President Mechanics' National Bank, N. Y.; B. B. Comegys, Vice-President Philadelphia National Bank, Philadelphia; and Enoch Pratt, President National Farmers' and
367 Planters' Bank, Baltimore, were appointed a committee to whom should be referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders.

On March 8, 1877, the committee met a committee of five from the Tennessee Legislature, consisting of Representatives John H. Savage (chairman) Lewis Shepherd and W. E. Travis, and Senators George W. Martin and Jesse Arleage at the American Exchange Bank, N. Y., and the following
368 proceedings were had:

Mr. COE: Before we begin our work, it is important for us to state to you, gentlemen, the attitude that this committee occupies; and the position in which you find them in respect to the question before us. We were requested, not by our own seeking at all, but quite unexpectedly for us, to occupy the place of middle men or arbiters between

the debtor and creditor of the Southern States in 369
default, in order, if possible, to make it easy by having a medium of this sort for each party to approach them and for them to collect the views of both sides, and then come to a determination what was right under the circumstances to be recommended, so that both parties should accept or reject it as they pleased. The gentlemen composing this committee occupy confidential positions in public institutions just like this one in which we are assembled. We each preside over one such cor- 370
poration in our respective places. We have nothing to do with buying or selling bonds. We own none of them and never expect to own any. Our business is simply to manage other people's business as safely as we can and to perform these great transactions as trustees; and we spend our lives in that way. I make that remark to disembarrass all of us of any idea that there is the least possible speculation or enterprise in this thing. We enter into this work as you see by this report before you, in a 371
purely patriotic spirit, with a desire to do the best thing we can for the country at large. We feel—and that is the general sentiment prevailing in this whole community—that these State debts are great obstacles to any possible progress in industry and to the restoration of the country. They stand as dark clouds over the country, both over debtors and creditors, to prevent any enterprise coming into the States that are in debt, and to prevent the benefits which we as common countrymen, would derive 372
from a free and general commercial intercourse and industry. We are interested as you are, because nothing can be done to your injury without it injures us as a part of this great country, and as a part of the great industrial system in which we are all concerned. Consequently this question affects not only both the debtor and creditor, but it is a

national question. These debts hang over these States, and they always will until they are removed and adjusted. We shall all die, but these debts never die. Individual debts cease, in a great measure, when the parties owing them go out of the world, but these State debts remain forever, and whatever we now do or refrain from doing, is historic, and inures to our credit or damage, as the case may be, and to the damage of the country. It is perfectly plain that these debts must be adjusted. It is not a question whether you or the creditor is willing to adjust them; they have got to be adjusted. Your country never can prosper—the country at large never can prosper—with this great pall resting over them. Now that is a perfectly clear social and mathematical fact. No man living in a State whose public obligations are in default can possibly live there without being personally concerned in these very State debts. They are his debts, and he cannot be prosperous in his own business unless they are adjusted, and so long as they remain unadjusted and the people remain indifferent to them, they will be indifferent alike to all obligations to each other. That is an indisputable statement. State debts unadjusted amount to saying, from highest authority, there is a license to everybody to get in debt and never pay. Certainly what the State does not do in its aggregate capacity, individuals need not do in their individual capacity. And then, again, the country at large is interested, because it must be prospered or damaged with the prosperity or misfortune of all. The head cannot but suffer if the foot is diseased, and *vice versa*. We are all one family, and the very nature and variety of our industry makes it imperative that we settle these liabilities and get these obstacles out of the way. That is the general sentiment that pervades this country, and is in the minds of all good

men the world over. These are abstract truths, but 377
they are applicable to this occasion, and therefore I emphasize them.

Now to come to the particular point. The gentlemen here who compose this committee desire to do the very best thing they know how, the best thing, because the right thing, and that which is perfectly just under all the circumstances. If the State of Tennessee, or any other State which we shall have before us from time to time, really cannot pay, now or hereafter, in full, they ought not 378
to be compelled. If they can, they ought to. It is a mere question of mathematics and of precise figures; of ability or inability; not of willingness or unwillingness. The matter of disposition stands as an imperative obligation forever. So let us dismiss that. It is not a moral but a material question to which we are now to address ourselves. With these ideas we would like to hear from you, gentlemen, what your views are on the whole subject, and I can say, on behalf of this committee, 379
that whatever you say will be confined to this room, if you so desire. I hope no discussion that takes place here will go out prematurely and be made the subject of newspaper or other comment, but let us consider this confidential until we are released by your reporting to your principals, and then we may report to the bondholders and to the public whenever you or we think it expedient.

I will say, furthermore, we have not thought it wise primarily to call the bondholders together. 380
We cannot get them all together, as they live all the world over, and if we could gather them in a town meeting, there would be views very inchoate and diverse, and we would be very likely to break up with no conclusion whatever. We have many communications which have come to us since our appointment, reciting the views of bondholders

381 generally as to what they would like to do, and we will give you those before we part.

Mr SAVAGE: In reply to one point which I supposed you and your colleagues would like to be informed upon, it is as to our power. We come here representing the people of the State as delegated by the Legislature. We act under resolutions, and those resolutions can be read if you desire it, or I can state them to you substantially. Ours is simply a power to confer freely and fully; to learn
382 your views. I might state in advance, that certain creditors addressed a note to Governor Porter requesting him to send a committee to New York to confer with the bondholders, for the purpose of making some settlement satisfactorily and just to parties. Governor Porter recommended that subject to the Legislature and it was fully discussed there. The committee to whom it was submitted, refused to send a committee to New York, but drew up a resolution and reported it to the House, say-
383 ing they would organize a committee there and refer to it all communications which should be made, but it finally ended in a discussion in the House asking Governor Porter to request proposals from the bondholders of the State, and that we consider them fairly and equitably. The Governor, as I understand, sent on the resolutions, but received no satisfactory answer to their original resolution. Upon the resolution suggesting you, gentlemen, as arbiters, the Governor transmitted us a second
384 message requesting us to send on a committee here. That question was discussed in the House and out of the House, and it ended in our appointment, as a committee, to come on here and appear before you, and to consult and confer with you freely, but it reserves in very guarded language all power of ratification or rejection with the Legislature, giving us no further power than to talk with you to ascer-

tain your views and to report the result. As I and 385
my colleagues understand, while we are not authorized to make any contract that will bind anybody without the ratification of the Legislature, and it is doubtful whether the Legislature intends that we shall commend, as a body, any proposal that may be made—it is the intention of the Legislature to see if your counsels and our counsels together can suggest a plan that will relieve our State from this tremendous debt. And I have the resolutions here, and I could read them to you if you would 386
rather see them, but that is the construction that we all put upon them, and in addition to that I can say, that it is my own desire and the desire of my colleagues, as I think, fully, if we can, to find and solicit from this Board—and we might say from your superior financial ability, for we are politicians, and from perhaps your better opportunity to know the general drift of this question upon your commerce. We, of course, profess to know better the condition of our affairs at home—your views 387
upon this important subject. The object of this commission, and, I cannot help but think you will find every one of the gentlemen with whom I am associated, in full agreement with me—I am considered one of the extreme politicians of the State. It is a little surprising that they should send me on here to made a compromise; yet I said that with my peculiar notions, I would like to see this thing compromised, that the people might be satisfied. I know I have some peculiar notions. I doubt very 388
much the right, the equity, the policy of creating those debts. I sometimes go to the extreme of saying that one set of men have no right to create debts—and I should rather read any other epitaph on my tomb—that other men should pay. Whatever we confer about, I can assure you it is our honest idea to seek some plan of adjustment that we

can maintain and carry out, and if we come to that, I think we will go home and try and enforce it among our people. We have great respect for our own opinions. We are ready to lay before you, in such form as we are able, any necessary facts, and I have said to my colleagues here, that I would devolve most of that duty upon them. The facts and figures had better be presented by them perhaps. They are ready to answer any question you would like to ask in relation to our finances and our debts, liabilities and means of payment.

Mr. Cox: I was going to ask whether you have not prepared some rough statement that shall make the basis of our discussion; in the first place, as to the debt, as to the resources, and as to the condition?

Mr. Martin: Mr. Shepherd has a paper of that sort, but it is not as full as we would like to submit.

Mr. Shepherd: Our idea was, that if you wanted to know all about the condition of Tennessee—its liabilities, &c., we had prepared ourselves to submit a paper showing the exact condition, and I have the rough memoranda which was gotten up with a view to the preparation of that document, if you should desire it.

Mr. Coe: You will put it in another form?

Mr. Shepherd: If you wish it; yes, sir

Mr. Coe: You see that both your side and our side of this question—if there are really two sides—stand before the great jury of all mankind. *They* are to try us all, and we have got to make our report to them; and we will keep that continually in view, because public sentiment is the great tribunal after all, that tries every man. We want to do only justice; what we will not be ashamed to read after five or six years have gone by. We are ready for your statement.

Mr. SHEPHERD: We have ordered a comparative 393
statement of our condition as compared with the year just before the war. For instance, the value of real estate and personal property in 1860 was $273,327,000. Our slave property was $115,000,000, aggregating $388,000,000, about $389,000,000. We owed in 1860, $20,000,000; $3,894,000 of this debt created for State purposes properly—the building of our capitol and creation of State institutions. That is what we denominate the State debt properly, including the State capitol and other charit- 394
able institutions, lunatic asylums, and so on. $16,211 were created under our law to encourage internal improvements—railroads and turnpikes. We put the present value of our taxable property at $225,000,000. Our Comptroller's report shows it to be a little more, but we take the usual depreciation, beginning with 1870, and it brings it down to $225,000,000. Then the present indebtedness—outstanding bonds, $23,000,000; then our school fund bonds, $2,500,000; unpaid interest, which our Comp- 395
troller shows is $2,500,000.

Mr. COMEGYS: Do you mean $2,500,000 of the $23,000,000?

Mr. SHEPHERD: No, sir, it is an addition. The registered bonds are $23,200,000. Then here we have the school land fund, $750,000. The Bank of Tennessee was an institution that belonged to the State, and was run by the State during the war. The State was liable for the acts of the officers of the bank in conducting the business of the bank. 396
Just at the beginning of the war the president issued $800,000 of newi ssue, which, we think, was used in equipping and supplying the troops raised by the State of Tennessee to aid the Confederate Government, and we are contending that that $800,000 was repudiated by the Act of Congress, under the reconstruction measures—the Amendment of

397 the Constitution, I believe it is - by which we were allowed to resume our relations to the General Government after the war. Our Courts have held, however, that that is a just liability against the State. The suit was brought by the holders of this new issue against the authorities of the State in an indirect way. For instance, they sought to make the tax collectible——

Mr. COMEGYS: Where did those bonds go to?

Mr. SHEPHERD: They were bank bills. Our Su-
398 preme Court decided that that issue must be received by the State. We have appealed that case to the Supreme Court of the United States. The present General Assembly has provided for the Attorney-General to go to Washington to represent the State side of the case. There is also a suit by the Depositors' Bank of Tennessee, raising almost precisely the same question. That is, the question of the liability of the State to make good the private deposits in a bank. That is why we put these down
399 among the probable liabilities for which the State must provide. That aggregates $29,960,000. Now we have in the way of assets claims against solvent railroad companies, which we think in all human probability we will be able to realize—$3,500,000—making our debt aggregate $26,0 0,000. We suppose the Arbiters would desire to know the cost of maintaining the machinery of our State government. We have taken the reports of our officers and compiled everything: added it all up, and we
400 make it $700,000 as our annual current expenses. That includes the sums we set apart for the support of charitable institutions, asylums for the deaf, dumb, blind, &c.

Mr. VERMILYE: School fund?

Mr. SHEPHERD: The State school fund is provided by the State setting apart $2,500,000 in bonds, upon which the interest is to be paid annually; and that

goes to the maintenance of different common schools throughout the State. That is included in the debt. 401

Mr. VERMILYE: At the same time it is a yearly expense, and therefore fairly to be added to this $700,000?

Mr. SHEPHERD: We treat it as an interest-bearing debt against the State, and we foot that up to reach this $26,000,000 of indebtedness. It is really included in the figures I have given.

Mr. VERMILYE: You put the debt into your indebtedness, and have besides that a running interest account yearly that amounts to $250,000? 402

Mr. SAVAGE: The $700,000 does not include that.

Mr. SHEPHERD: No, it does not include that at all. If you included that interest as a part of the debt, it would be proper, of course, to add it to the $700,000, and increase the current expenses. Now, I have a statement here also which shows the indebtedness of the counties and cities throughout the State. The indebtedness of ninety-three counties— 403
we have fifty-nine that we have the figures for, and estimate the others—makes $5,594,000, and the municipal debt in the same counties is $12,000,000.

Mr. COMEGYS: Is the largest share of that the Nashville?

Mr. SHEPHERD: Memphis is the largest, and Nashville the next.

Mr. COMEGYS: For what was Memphis?

Mr. SHEPHERD: For various things; getting pavements and buying parks, and getting aid for rail- 404
roads, and improving river fronts.

Mr. COE: Tell us in general terms the history of this debt, and how you have reduced it to this point?

Mr. SHEPHERD: In 1856 and 1857 we passed the first internal improvement law, providing that upon certain conditions bonds could be issued or lands

405 given these railroad companies in some way to give aid to the company to the extent of about $16,000 a mile; and also to turnpike companies to the extent of $4,000 a mile. That brought the debt up to the figure that it was in 1860. $20,000,000 was expended in this way, in 1865, when Brownlow was Governor of the State.

Mr. COE (interrupting): Was that an absolute donation or a loan?

Mr. SHEPHERD: A loan; and the State had the
406 first mortgage upon all the roads, as a security for an indemnity of the State. Those companies up to the war paid their own interest, and up to the Act of 1852 they were required to pay a certain amount for a sinking fund, which was done every year; and therefore we did not feel the railroad indebtedness at all, because they were self sustaining and paying interest, and providing the sinking fund for the purpose of retiring the bonds. In 1865, while Governor Brownlow was in charge
407 of affairs down there, they passed a sweeping amendment to the Internal Improvement Law of 1852, and put it in the power of any adventurer that wanted to, to get up a display of imaginary railroad from one point to another. They would get up their affidavits that they had done a certain amount of work on this road, and throw out the number of bonds the act provided to be issued to the railroad company. They were not to be issued until so many miles were completed, but they got
408 the bonds for the full length of the railroad without ever striking the hatchet into the work—without doing anything towards the building of the road. Under the operation of that law, our indebtedness was increased to $44,000,000—something more than that—and when the present political party came into power, we found our State debt at that figure, something over $44,000,000.

Mr. MARTIN; I think you will find the highest 409
point it touched was $43,000,000.

Mr. SHEPHERD: We found that these companies, which before the war were solvent, had all become impoverished by the results of the war, and the interest had accumulated such a burden upon them that they became insolvent. Since the legislature passed a law to sell out the railroads, and pay the debt as far as it would go, and under the operation of that bill we reduced the debt down to the figure we have mentioned, $23,000,000. Well, it was less than 410
that, and in 1873, under the Funding Act, the governor makes it $23,000,000. We had it reduced probably to the neighborhood of $20,000,000 by the sale of these railroads.

Mr. COE: I have the comptroller's report here. He calls for $3,500,000 of such property now.

Mr. SHEPHERD: There is $1,500,000 due from the railroad that has been sold. The other is due from purchasers of the road sold under that.

Mr. VERMILYE: It is a valuable asset, then? 411

Mr. SHEPHERD; Yes; we count it that.

Mr. SAVAGE: There is one consideration there, that will make a difference of perhaps nearly $5,000,000 in our debt. The bill passed in 1873, to fund all these past due bonds. It funded all the interest that accrued upon the public debt during the four years of the war.

Mr. SHEPHERD: That was done by the funding bill of 1868.

Mr. SAVAGE: Yes, sir; we held that no interest 412
was due upon those during the war. In other words, it is a principle of law, that no debt bears interest against itself unless it is specially contracted. It is another principle, that it does not bear interest between the subjects of different belligerent powers. When these parties came to fund that thing, they just funded all that interest and gave no credit.

413 Mr. VERMILYE: If I understand you rightly, then, you contend that the interest did not run on this debt for what period?

Mr. SAVAGE: During the war; four years. The question about when the war began and when it ended, is a technical question, but we have adopted the rule in our State as four years, and there is a conflict in the Courts as to the time when the war did end.

Mr. COE: Does that refer to debts due the bel-
414 ligerent power only, or to your own people, or to everybody? How would that apply? That principle being a principle of war, could not apply to those who were friends of the debtor.

Mr. SAVAGE: We applied it this way: It has been applied all the time between parties living in the Northern States and parties living in the Southern States. It might be a question of fact where the bonds were held, but I say the better principle is, that the government never pays.

415 Mr. COE: The Government of the United States did not make such a discrimination in its debt, as I can discover, held by the Southern people.

Mr. SAVAGE: They refused to pay our people anything.

Mr. COE: Not if it is a public debt. You know millions of the public debt were held by people then in the belligerent States. The United States never repudiated that portion or any portion, or sought to.

416 Mr. SAVAGE: I do not know how they might have done about the interest; it has been an established rule by our Courts that the interest did not run.

Mr. COE: Your idea is, that a part of the damage you may do to an enemy, consists in not paying a debt to him?

Mr. SHEPHERD: The condition of the country is

in war such, that people cannot get there, and the Courts are not open in order to afford the means of collecting debts. 417

Mr. COE: After all, it is a question of sovereignty. The State cannot be obliged by legal enforcement to pay anything, therefore it is a matter of eminent sovereignty in war or in peace.

Mr. SAVAGE: It proceeds upon the ground that during the war there are no profits made, and, therefore, nobody ought to require interest. It is an absolute rule, as between the citizens of belligerent powers, and it is argued that the better rule is, that it ought not to run between citizens of the same during the war, because no profits are made. Still, that is an argument; the other is an absolute rule. 418

Mr. TRAVIS: The only question that we shall make of this thing is that it has been settled by the State itself. It was funded under this bill without any question being made of it whatever, when this question should have been made at the time; it was forced upon us. 419

Mr. PRATT: I do not think that rule applies. I, as an individual creditor, could not reach any one in the Confederate lines to demand my interest of parties there who were ready to pay it. But, here is a public debt which, as our chairman states, never dies and must be paid. The United States Government, and the State Government, owed a great deal of money to people in the Confederate lines; interest was not demanded for four years, but when the doors were opened they came in and got their interest, all of them. I do not think that rule applies in a State debt so much as in an individual debt. 420

Mr. COE: Do you know any case in any State that now pays the interest, where that principle was insisted upon?

Mr. SAVAGE: I do not know as I do.

421 Mr. COE: There is none. No Northern State has suggested such a thing, and no Southern State that pays anything refrains from paying that part as much as any other.

Mr. PRATT: The Southern States pay their interest. The State of Virginia always paid her interest. If you could get through the lines and get there, you could get your interest.

Mr. COE: I do not suppose, in a question like this, it would hardly be wise for us, with all due re-
422 spect to you, to raise a question which would put the State of Tennessee in any peculiarly obnoxious relation that other States do not occupy, on general principles of equity and humanity. Take, for instance, Alabama; that paid its foreign debt right along during the war. I think we had better try some other principle than one that would, in my own judgment, shock the moral sentiment of mankind. If you spread an idea of that kind, it looks to me like special pleading rather than equitable
423 discussion. I think we can do better than that; we had better try something else.

Senator MARTIN: My view of that is this—leaving outside the legal question entirely, because I am not competent to speak upon that subject—I would urge, if that was urged at all in this light, that, as it was interest that accumulated during the war, it might be a palliating circumstance, and might be brought in as a reason why that, during the exigencies and misfortunes of the war, the $5,000,000 had
424 accumulated at that time, and Tennessee finds she might have been—we do not say she was—but such a thing might have been possible if they could have been reached and the State authorities had been organized, they might have paid it; but the distraction of the war prevented her from paying it, and as it accumulated upon her from her losses during the war, and other things, it comes in as an

argument why the thing should be given some allow- 425
ance.

Mr. SAVAGE: I argued it as between citizens of the belligerent States.

Mr. SHEPERD: I understand it simply as an equity in our favor of arriving at the amount we are able to pay.

Mr. MARTIN: I know there are instances among individuals of a State, where they have paid up the interest during the war because they thought it was about as much as a man could do to pay the princi- 426
pal, and as a matter of compromise between individuals where it has been asked. I know several instances of the kind where parties have agreed to settle by paying interest, and the war had prevented a man from paying the debt, and it was hard to pay afterwards, and it got a little larger than he could pay without ruining himself, and so individuals have given up the interest.

Mr. SAVAGE: It was decided by the United States Court of Maryland in this way. I could bring you 427
the case.

Mr. COE: As Colonel Travis said, this question having been settled by the State itself, it would be one of the palliating circumstances in the adjustment.

Mr. ARLEAGE: While we are upon the question of equity, now if the committee desire to go through all the questions of equity that might bear upon the right of the State, there is still another question that is more important really than the question of 428
interest that accrued during the war. This question is this: In 1851 and 1852 the great Internal Improvement bill passed, issuing the credit of the State to the various railroads then in contemplation, which were the principal railroads of the State—in truth, most of the railroads of the State. At the time these bonds were issued there were some mem-

429 bers of the legislature who opposed the issuing of bonds for internal improvement, or opposed the loaning of the State credit for that purpose, and those individuals—myself among the number—got a condition placed upon the Internal Improvement Act, saying that no bonds should be sold for internal improvement purposes under their par value. Now, the internal improvement companies were so anxious about their roads that they went on and sold their bonds for iron, evading the question; and the
430 State lost many thousands, probably millions, in that way in their obligations as securities on the part of the internal improvement companies by a sale of bonds for iron much under the real value of the bonds, or what ought to be the value of the bonds; and it affected the State in this way: when the State did become responsible for the bonds as security, as a consequence the value received fell far short of the cost of improvement in investment that they otherwise would have. The State lost by it.

431 Mr. COE: I suppose that is a universal fact. There never was a great public work built in any State without such abuses. We see it all around us.

Mr. ARLEAGE: Just after the war that same thing was repeated more extensively, to the detriment of the State. That was expressed by our secretary.

Mr. MARTIN: Just in that connection I will say that after the war the $15,000,000 of bonds that have been issued since the war, and I merely make this as a suggestion that the gentlemen can think of it,
432 because I think it is a strong point in our favor—of those $15,000,000 we realized perhaps not over an average of thirty cents on a dollar.

Mr. ARLEAGE: I would say we contemplated merely an interview to-day, and that all these questions we would put in better shape for you.

Mr. COE: You naturally would, but this meeting brings us together merely.

Mr. PRATT: You say only thirty cents on a dollar. Did the comptroller sell the bonds for thirty cents? 433

Mr. MARTIN: No; the bonds were issued by State authority and issued to railroad presidents.

Mr. COE. Perhaps some of you gentlemen know that there is in the city Mr. R. M. T. Hunter, of Virginia. What objection would there be to have him come in and sit with us? There is no objection on our part. He is a gentleman of eminence, whom you all regard, and his report at home may facili- 434 tate a delegation from his own State. I was going to ask him, informally of course, and on your behalf particularly. We are going, probably, through this same track with other States, and it would save time. (The gentlemen of the committee assenting, Mr. Hunter was invited in.)

Mr. MARTIN: The bonds issued were turned over to the various railroad officers, and they were authorized to use them. There was about $15,000,000 of the bonds issued since the war, that 435 went over to the railroads for construction and repairing them, and building new ones, &c. Those bonds, for various reasons—I suppose one reason which had, perhaps, some influence with the gentlemen who bought the bonds was, they knew that the people were having no power in Tennessee: that there was but a very small portion of the white population that were allowed to vote, and had but little to do with the Legislature, and had do authority. Men who had taken part in the Confederate army, 436 in any way, were not allowed to vote; and it might have had something to do with the sale of the bonds, and, at any rate, I suppose thirty cents was realized on the dollar on the sale of those bonds.

Mr. PRATT: What I wanted to know was, how you make that out? How do you reach the result of the thirty cents on the dollar?

437 Mr. MARTIN: That is, I suppose, nothing more than a guess; but we judged at the price they were sold in the market and the price they were quoted, and we took up the price of the Tennessee bonds during these years, and the price the president sold them at, and we think they could not have sold them over thirty cents on a dollar, because we know what that class of bonds were selling for at that time. They are called in our city the Brownlow bonds, and were not quoted until funded. They
438 were never quoted at the prices the old bonds were. The road sold them to the president. I can give you the name of every man they are issued to.

Mr. PRATT: I do not get exactly the answer. How did the State get thirty cents on the dollar?

Mr. MARTIN: By the State I mean that the bond was sold by the president. They were issued by the railroad president and sold in the market for whatever they would bring. He had for $100 bond $30 to appropriate for railroad purposes.

439 Mr. PRATT: The State gets 100 mile of road for $15,000. I do not see how the State loses anything. These bonds were sold for thirty cents on a dollar; now, who bought those bonds? Did not your railroad companies buy them, and turn around and pay back the State?

Mr. MARTIN: Not at first.

Mr. PRATT: They were the only purchasers of the bonds?

Mr. MARTIN: I do not know.

440 Mr. SAVAGE: The State had these bonds made for the purpose of helping these railroads—the party in power. Then the State delivered them over to the president; the State hands them over to the president. One of them was seen by one of my friends here the other day—Mr. McHenry. The real bargain betwixt the State and this man is, that he puts $1,000 worth of money in that road, and we

take a lien upon that road for the repayment of the 441
guarantee; but this man goes and gets, perhaps, thirty cents to sixty cents on a dollar, but sold the bonds off so that the State got hardly any road. He puts the balance in his pocket, and our road is gone and we have none.

Mr. PRATT: What I wanted to know was, whether that money was put out there, and you got no road?

MR. SAVAGE: Yes; he sold the bonds for less than one-half, and then we charge him with putting it in his pocket. 442

Mr. ARLEAGE: Those bonds were issued without the consent of the State, anyway. She was not represented; had she been, those bonds would not have been issued.

Mr. PRATT: If they had built you the road, you would have been right enough?

Mr. SAVAGE: Yes, sir.

Mr. SHEPHERD: The State issued to the North Western Road $5,000,000 of bonds; they sold the road and it brought $1,500,000. 443

Mr. COE: It amounts to this, that the agents of the State cheated it.

Mr. MARTIN: That is just what it is.

Mr. COMEGYS: What you mean is, that the power that created these bonds was a power which you could not control. It was not a fairly organized power. It does not attack the legality of the point, but it is simply one of the points that we want to give you.

Mr. COE: And it is especially proper that we 444
should take it up, among the general considerations.

Mr. SAVAGE: I will call your attention to another matter. Here is a road called the Cincinnati & Cumberland Gap Railroad. The State gave that road $1,141,000, and the report of the secretary says that the road brought $300,000 in market. To another road, running from Knoxville to Maryland, the

445 State gave $710,000 worth of bonds. It was sold for $15,000 of bonds. Here is another road, East Tennessee & West & North Carolina Road, and the State gave it $400,000, and it sold for $20,000.

Mr. PRATT: Are those roads in operation now?

Mr. SAVAGE: Yes; they are running, after a fashion.

Mr. PRATT: They are running over a country that they increase in the value of the land?

Mr. MARTIN: Yes; perhaps where the land was
446 worth $75 an acre before the war, and that now cannot be sold probably for its taxes. Tracts of land have been sold within the last five years as many as three times over for taxes, and never realized a cent to the State. One sale put right upon another year by year, and it is still going on, and that kind of business is increasing year by year.

Mr. COE: Still the fact Mr. Pratt has in his mind is, that these railroads have had whatever effect upon the land they legitimately might have had in
447 enabling people to get about.

Mr. SAVAGE: I know the Tennessee and Chattanooga Railroad; I know you cannot sell land right along the track for more than one-third what you might have sold it for in 1859 and 1860. I do not impeach the road, but you cannot do it.

Mr. COE: What is your aggregate mileage of railroad?

Mr. ARLEAGE: 1,500 miles in all. That is my recollection about.

448 Mr. PRATT: I want to say to you that the value you put upon your land now as being $25 in place of $75 is not applicable alone to Tennessee. It is in the State of Maryland, and is in the State of New York, and it is right here, within two miles of where you now sit. We are something in the same position that you are. I know that lands in Maryland have sold for $25, that were worth $75 in gold.

Mr. COE: I think also with the last gentlemen, 449
that what you have said in general as to the abuse of all your State indebtedness is equally applicable to the United States, and to every State in the Union. Take the United States, it gave immense amounts to build its great Union Pacific and Central Pacific. I suppose it might have been built, and we all know it, for one-third the sum in cash. More than two-thirds was wasted. In the State of New York it is about the same. While it is a thing greatly to be lamented, it is not so peculiar to Ten- 450
nessee that you may regard yourself as being exceptionally sufferers, because we are all alike in that respect. Take the whole State of Pennsylvania; they have done this same thing, and so has every State in the Union, but especially the United States itself. Ever since the war, during the time you were building those railroads, the whole country was spending money in the same lavish way, and getting just about the same proportion of real value for it. 451

Mr. PRATT: It is the same in Massachusetts, the same in Connecticut, the same in Ohio, in Illinois, and worse. You go into the City of Chicago, and it is a great deal worse there.

Mr. SAVAGE: We know that we owe it; now we ask you bankers how are we going to pay it?

Mr. COE: This is giving and taking with the utmost kindness, and I think we are progressing remarkably well. We are getting the picture well 452
before our minds.

Mr. TRAVIS: It is important in this light. It is important to show you now our present ability to reach our liability.

Mr. MARTIN: I wish to call your attention to one particular in regard to that amount. That amount was obtained under a very liberal and lenient

method of assessment. We were paying a light tax. Our assessment was not rigid. There were then no oaths administered to either the officer that made the assessment or to the party that gave in his property. But the assessment now as made out in Tennessee is exceedingly rigid. I have called your attention to this fact, to show you that if the same assessment and the same law had been applied and operated before the war in 1860 that we are acting under now, there would perhaps be a much larger difference between the taxable property in 1860 than at this time, if we had been assessed under the same law. The law now is very rigid, and swears both parties. It is so inquisitorial and obnoxious, and has proved itself so, that this Legislature will be compelled to repeal it. It assesses now on one and two years' credit. The assessor comes to the property holder, and they together, upon oath, assess upon a basis of what that property is worth upon a credit of one and two years—the valuation; not upon its cash valuation, but upon a one and two years' valuation. I will call your attention further to the item of the school fund. Singularly enough, the Bank of Tennessee was carried South during the war by Governor Harris and others, and they saved out of that wreck $650,000, and brought it back to Nashville, and delivered it up to the State authorities. Governor Browlow took charge of it, and it found its way into the Bank of Memphis on deposit, and in another year or two it was lost. The bank failed, and that lost it entirely —$650,000. Another fact, I believe, has already been mentioned; the State is endorser. Of course, we are not urging that as a legal question at all; but this large amount of debt, all originally, except $3,000,000 or thereabouts, was for railroad purposes, and the State was merely endorser upon them; and we thought, of course, that that might

have something to do in making up this decision 457
The roads before the war paid their interest and their sinking fund.

Mr. COE: The printed statement that I have purports to be, and it is, a statement of the Comptroller. Now this debt is very explicitly stated on pages 26 and 27 to be $ 3,000,000, less the assets due from railroad of $3,000,000, amounting to $20,000,000. This is the liability, without arrears of interest—over $2,000,000 more. That would make it, say $25,000,000, less the $3,500,000 assets in rail- 458
roads which would make it net $22,000,000. These additions which you have made, could they have been considered of great importance to the Comptroller without his mentioning them?

Mr. MARTIN: I will explain it to you, and think I can make it satisfactory. It is well known to gentlemen that all these questions of State finance, and State policy, and State affairs, enter into State politics, and are a matter of some account with parties. The Democratic party is in power to-day 459
in Tennessee. The Comptroller is a Democrat, and, of course he wishes to make out as favorable a statement as he can; and as far as he has gone I have no doubt he has told the truth, and the whole truth; but, of course, it is natural that he will leave out any statement that he can leave out without calling in question his honesty, integrity, or duty. Now the statements we have here—

Mr. COE: How much do you make them? That school fund is in this shape. The school fund is a 460
debt. The State pays interest upon it. It is one bond of that size; he does not bring it in there because it has nothing to do with the State debt, to outside parties. We do not consider it in that shape at all, but it is legitimately a State debt, to itself.

Mr. COMEGYS: It is a question of tax.

Mr. MARTIN: Yes; well, the Comptroller says

461 nothing about the item of back interest. He gave me the item of back interest that you have not got there the day before I came away.

Mr. COE: He has the coupons of three series that are past due separately.

Mr. ARLEAGE: What amount does he say?

Mr. MARTIN: $700,000 each one, and there are three sums; he told me $2,000,000. He gave me those figures, and said that was as nearly as he could come at the present day.

462 Mr. SHERMAN: And he does not put in the new issue?

Mr. MARTIN: Do you want that?

Mr. COE: That is not material: we want to fix in definite terms the amount of debt we are to arrive at. I want to free this discussion of all extraneous things.

Mr. MARTIN: Every man of Tennessee knows that knows anything about the public debt, that that was
463 not all the Tennessee debt we ever owed, but that is all he is compelled to put in; we know these other are probably debts. We are contesting this new issue and the old issue, but the old issue we have to pay. We are contesting every ground of the new issue, but put it down because it is very probable we shall have to receive it as tax. That school fund was previous to the war; it was land that belonged to Congress. It is a question that has never been questioned, and we paid the interest on
464 it until the war, but since the war we have never been able to do it.

Mr. COE: If you add the school fund to your debt, it is but another way of leaving it out, and saying you must have so much annuity for school expenses.

Mr. SHEPHERD: The Comptroller admits the existence of the school fund debt, and marks it School

Fund The only difference is that we might have 465
included it in our item of the State current expenses. Now at the time that Mr. Blackburn was Comptroller he never got his account in his Comptroller's Report up higher than about $39,000,000, at any time. Governor Brown, who was equally as good, and perhaps better, authority, shows that that debt, at that very time when he first came into power in Tennessee, was a fraction over $43,000,000. Well, of course, the Comptroller dodged these questions for political purposes, and left out items that really 466
go in; but I can show that the very day Mr. Blackburn says we owed about $39,000,000, Governor Brown, in an official letter to the citizens of Memphis, shows the debt to be $43,000,000.

Mr. COE: Now, gentlemen, we have pursued this question in this direction, also the debt, how it originated, as far as is at present profitable. Would it not be well now to take this other question, *how can it be paid?* That is the question after all, and the vital question. Can it all be paid, and, if not, 467
why not? Of course we all agree that whatever can be done must be done. It is a question of ability. Suppose that we address ourselves now to the ability of the State to pay this debt.

Mr. MARTIN: As a member of the committee, and for myself, alone, I say that I do not think, with the figures before me, that the State is in a condition to pay the entire debt. I give as my reasons: First, I take them out, of course, of taxable property that 468
we have—

Mr. COE (interrupting): Would it not be better to make an estimate as to the amount required? Be kind enough to tell us that. What amount do you need of annual resources?

Mr. PRATT: Your State debt is $26,000,000, and the interest on that is $1,500,000. It costs to main-

469 rain the State government $700,000. Your school tax is $221,000.

Mr. Cox: $2,300,000 per annum you want?

Mr. Pratt: That is, putting it all in.

Mr. Martin: Yes, sir. Well, we need $2,250,000 to pay our current expenses and interest.

Mr. Shepherd: They reduced it to $900,000.

Mr. Martin: The tax at 40 cents on a $100 reduced it to $900,000. That is a deficit of $1,350,000. The present legislature is pledged by the State plat-
470 form, and as individuals, not to exceed that tax, and many are pledged to reduce it all hazards. It is a question to day whether the Legislature will be able to retain that tax of 40 cents on any condition on $225,000,000; but, under any circumstances, nothing we can do here will induce the Legislature to raise the tax above 40 cents.

Mr. Pratt: What other revenue have you got?

Mr. Martin: Before we proceed further, I will say that we have a privilege tax that yields about
471 $250,000 per annum, but that tax will be repealed by this Legislature. The privilege tax is on a man's occupation, a license for merchants, and tax upon notes. They have absolutely made the keeping of a dog a tax.

Mr. Pratt: Have you not lately had it decided in your favor that you could tax these railroads that you have been giving these bonds to?

Mr. Martin: In a certain way, yes, sir; and that question is before the Legislature to-day. We tax
472 them, but the law that we passed is unconstitutional. The court provided a mode by which we could tax them, and we are trying to get at them now.

Mr Pratt: Your Courts had decided that you can tax them?

Mr. Martin: Yes, sir.

Mr. Shepherd: You cannot calculate upon deriving any present revenues from the railroads, for the

reason that in all acts af the Assembly the railroads 473
were given exemption from taxation for a period of twenty years, and some longer than that. Now our Supreme Court decides that we must tax railroads *ad valorem* on their property, and therefore they come in and claim this exemption. The exemption is from three to ten years.

Mr. COMEGYS: Is it not a privilege in law that a State never surrenders its liability to tax?

Mr. SAVAGE: I have said I would never pay any attention to those exemptions, but yet it is a litiga- 474
ted point.

Mr. MARTIN: If all the railroads were subject to taxation, we could get $75,000; that is about what they would be assessed under the present law.

Mr COE: Have you any other resources; is there anything you can apply tax to besides?

Mr. MARTIN: There are other things we might apply, if the Legislature would pass it, but the Legislature would repeal it; I am satisfied of that. You might tax telegraph companies; it is possible that 475
you might do that. I think Tennessee has been making about as searching tax laws as can be sustained. We have brought everything under the name of privilege that we could possibly get at.

Mr. SAVAGE: We have an exemption there on personal property, but at the same time the personal property is taxed mighty close.

Mr. COMEGYS: How much does this accumulative taxing reach finally?

Mr. TRAVIS: Forty cents, State tax; the counties 476
will average about sixty-five cents.

Mr. PRATT: The municipal tax is one thing, and the county tax is another.

Mr. SAVAGE: Forty cents for the State, and then an additional ten cents for school purposes; that is fifty cents.

Mr. COE: In the $26,000,000 you put it at forty cents?

477 Mr. MARTIN: Yes; but property there is ten cents extra taxed.

Mr. SAVAGE: The lowest county tax is about sixty cents. In Memphis it is five per cent.; in Nashville it is about three to five per cent. I pay where I live about $1.

Mr. MARTIN: Then when we compare the rate of taxes, we have to take into consideration the locality. We are dependent upon agriculture almost entirely. We have no manufacturing interest that
478 amounts to anything in the way of paying taxes. It is all from the agricultural interest. That interest, of course, has been growing weaker instead of stronger; and our agricultural interest to-day is weaker than it was five years ago. The amount of our profits are smaller, from some cause or other. The amount of our tax sales have increased enormously.

Mr. SAVAGE: I remember distinctly being in Cincinnati in June last, and a Cincinnati paper stated
479 that there were eighty-six columns in the *Memphis Ledger* of condemnations for tax sales.

Mr. COX: This $750,000 for expenses includes your school tax?

Mr. SHEPHERD: No, sir; that comes in on the debt of the State; the Comptroller puts it down at $221,000. If we were to include that school fund in the item in the current expenses, it would make it $900,000.

Mr. PEAVY: Are you getting much coal out of
480 your mines, there?

Mr. SAVAGE: Yes; but it is not a flourishing business yet. I look forward to that time when it may be a flourishing business. I have a charter there. I introduced a bill into our Legislature the other day extending one step further a legislative progress to which I am not very cordial in approval. I have never been in the Legislature before. The

State, in 1865, passed a law allowing aliens to hold 481
real estate, and they came and bought those lands up. There was an English company there invested, I suppose, $1,200,000, they say in improvements and coal lands. Foreign corporations have come and filed their charters there; they have been given full power to transact business, just as domestic corporations, and it makes their charters good. It is an experiment yet. It is a new progress there to allow corporations this privilege.

Mr. ARLEAGE: Would you permit me to ask you 482
a question, Mr. Pratt? What is the cause of the high tax in the States of New York and Massachusetts; States which are free from the ravages of war?

Mr. PRATT: Building railroads when the land was not worth $1 an acre, putting it up to $100; I think the whole assessment of your property in Tennessee, in 1844, was more than $64,000,000. What brought it up to $225,000,000? You have, you say, lent your credit to railroads to the amount of $30,- 483
000,000. Now, then, who is the gainer? You have lent your credit and advanced the wealth of your State. You can lose the whole of this debt and still you are a great gainer.

Mr ARLEAGE: The reason I asked you was to lead to another question, affecting us, I think, more than all other things. Our loss through the State was almost entire. We lost our property of all descriptions that was subject to loss, and it is the government debt that hurts us more than any other 484
debt. Now we pay on our whiskey there 90c. on the gallon.

Mr. PRATT: That don't take the wealth out of your State any. Anybody that drinks whiskey ought to pay a tax on it. I think when you come down to the matter and look at it here, you are very great gainers after all in putting your money out

485 for your railroads. I think Mr. Savage has got the right idea. Money is going down there. I do not think you have lost much. Without your railroads you would have nothing; with them you have got facilities, and though some of them do not pay, at the same time they bring work into your State.

Mr. Martin: We find the value of the land in 1860 was $209,000,000.

Mr. Pratt: What was it in 1844, before you had
486 any railroads?

Mr. Martin: Well, take 1840; it was $70,000,000; 1850, $84,000,000; 1860, $209,000,000. Now then, in 1860, we had but about two lines of railway completed in Tennessee.

Mr. Pratt: But you had the prospect of them, that is the same thing.

Mr. Martin: Yes; imagination has proved a good deal better than the reality. Now, in 1860, it was under the most lenient system of assessments;
487 well, it was as lenient as it could be: It was just between the property holder and the assessor. The property was always valued at about $\frac{1}{3}$ of its value. It was $209,000,000 in 1860, and it is $268,000,000 in 1876, with all the rigid assessment. In 1840 the average value was $3\frac{55}{100}$; in 1860 it was $8\frac{53}{100}$; in 1876 it was $6\frac{55}{100}$. So, on railroads where, according to that figure, the imagination, I admit, had something to do with it, but the reality did not have much effect, so far as the land is concerned. I ad-
488 mit that railroads are a benefit to the country, and that when introduced in one State they must be introduced into another, but we are very, very weak there.

Mr. Cox: From this statement of your property, it won't pay six per cent. on the whole $26,000,000.

Mr. Pratt: Your Comptroller's report does not make out so much deficiency as that.

Mr. MARTIN: No; and when they passed the 489
funding bill some years ago, they made the funding tax pay the interest; they made out that they would certainly do it; we know whether they fulfilled that promise or not.

Mr. COMEGYS: Why have the Legislature determined upon the rate of 40c. to be an inflexible one?

Mr. SAVAGE: It was in the democratic platform.

Mr. MARTIN: To-day, if the democratic party had not pledged themselves to that platform, it would have been worse than it is. I am speaking 490
as an individual now, and of course you gentlemen will excuse me. I am speaking from the standpoint of a State credit man; I have been for State credit all the time; I have done all I could for that purpose; I have convinced myself, whether right or wrong, that in the first place, Tennessee is not in a condition to pay all of her debt, and in the next place, I pledge you my word that they were not in a disposition to do it. We would have been in a much worse fix if 491
the Democrats had not pledged 40 cents: if they had attempted to go beyond that, Mr. Thomas, the independent candidate for Governor, would have been elected, and his platform was, no tax at all; what I mean by no tax, was, that he intended to reduce it to the lowest notch. If the people had not understood that it was forty cents and no more, we would have been in a much worse fix; those things get into politics, and they are used for political purposes. But I as an individual, do not want 492
to see this State debt, as opened to-day, enter another political canvass; I do not want to see it become a political issue again. I believe we will go from bad to worse every day, and to keep it out, and to do what is fair, and to do what I believe we can do, I much prefer to fix it up some practicable way if we can reach any such way. Reduce it to

such an amount that we will never be pressed or bothered about paying it hereafter. That it will be a fact that we shall be able to meet the interest promptly, and that no man may say hereafter, it is too high, and all that sort of thing, and that we might have made better figures.

Mr. SHERMAN: You have no income tax?

Mr. MARTIN: No, sir; we all paid an income tax to the Government several years ago, but not now.

Mr. PLATT: I would state, Mr. Chairman, that I have been through something of this ordeal myself, in my life. I am old enough now. I wish to state that my own State of Maryland was in a worse plight than the State of Tennessee. I do not know but some of you, gentlemen, may be old enough to recollect it. In 1842 or 1843 we stood on an abyss the same as Tennessee stands at this moment. We could not pay the debt; we were broke. We would have gone down past all redemption. The debt was a large one. We had an $8,000,000 loan; it was sold in the market. Our bonds sold at forty cents on the dollar, and people did not want to buy them at that. People left our State as rats run from a sinking ship. We were in a state of repudiation, in fact. That was openly advocated and openly proclaimed; but fortunately it did not seem to be the voice of all people in the State. There was a man who published a very strong letter, claiming that we could pay our debts, and should pay them. He rallied a party around him, and we went to the Legislature. A man of my own name was Governor of the State at that time, although no connection of mine. We told him that the State could pay and must pay. There was no getting out of it. Said he: "How are you going to get the money; there are no taxes coming in; the people do not want to pay the taxes?" "Well, sir, we must get it some how," and we put our heads together, and we con-

497 cted various measures, and among others we created a stamp Act, the most objectionable of all taxes ever put upon Americans in the world. We stamped every note and obligation, and bill of sale, and everything else to raise money; and the result was that we did pay. The State commenced paying, and continued to pay, and those bonds that we saw selling at auction at 40 cents on the dollar, sold afterwards for 112 cents on the dollar. The very moment the people found we did not want the money they brought it to us. That would be the 498 case, in my opinion, now in Tennessee. Tennessee is a rich State; there is no doubt about that. I used to think that when I got Tennessee bonds I got something better than gold and silver. The State of Maryland started to pay its interest, and did pay it; and in a very few years we not only paid the interest but the principal entirely. When the war came on we had no debts. During the war the debt was created. We also created a sinking fund in 1864. During the war we got some other debt upon 499 our shoulders, but to-day the State bonds of Maryland are selling from 112 to 114, payable in currency. The State of Maryland is not as rich as the State of Tennessee. We went through the war; so did Tennessee. We lost our slaves; so did Tennessee. Our land is depreciated from $75 and $80 an acre to $25, but we still pay our debts, and our bonds are 112. Here is the little city of Baltimore, only 300,000 inhabitants, that carried out a debt of $10,000,000 more than your State of Tennessee, and we 500 get along. Our State debt is paid with currency, subject to a State tax, selling at 110 to 112 to-day.

Mr. ARLEAGE: What was your State debt in 1865?

Mr. PRATT: It had run up to nearly $15,000,000. We have a sinking fund; it has gone on, and will soon go out of existence. We very fortunately

501 passed an Act, which I think your State did. We have limited our Legislature; they cannot mortgage themselves away any more to railroads. It is a part of the constitution.

Mr. SHERMAN: Cannot make any at all?

Mr. PRATT: No, sir.

Mr. SAVAGE: We can issue bonds, but only for general purposes.

Mr. PRATT: We can to a limited amount; but not to a railroad or canal company, but we could
502 issue bonds to carry on the war, and that is the way our debt came upon us. Now, it only wants a small effort, in my estimation. I do not think the State of Tennessee is in a desperate condition, or in a state of bankruptcy. I think they ought to have some relief; and they ought to have a lower rate of interest fixed upon their bonds, which they could make an agreement upon, and I believe that the bonds of Tennessee will come up and be worth as much as ever.

503 Mr. COE: I want to add something in the same direction. I have just got through negotiating here for the city of Cincinnati, $16,000,000 of bonds. The last 1,000,000 is selling now. They are paying interest on those at 7.30, which makes more than the whole of your State interest together, at the highest rate you can fix it. This debt is incurred for the purpose of reaching the State of Tennessee, to get the valuable trade which they believe lies there. They think enough of that State to reach it
504 at such cost.

Mr. ARLEAGE: They will reach below us.

Mr. COE: It is chiefly to come in contact with the system of railroads that you have built, that induces the city of Cincinnati to carry a debt of $22,000,000 or $23,000,000—as much as all your debt is, and with a city of only 250,000 inhabitants against 1,250,000 in the State of Tennessee. That city alone has val-

nation for taxation of only $180,000,000 of property 505
against your $268,000,000. They are paying, therefore, seventy-five cents on $100 against your forty cents for the single purpose of reaching the business which you think don't lie there. Now that is a very important fact, as showing the difference between people. There is no difference; you all know very well there is not as much wealth in the City of Cincinnati as there in the State of Tennessee, nor one-half as much. If you had to-day to exchange one with the other, you 506
would give twice as much for the State of Tennessee as for the City of Cincinnati. *They* are willing to pay seventy-five cents, and do it gratuitously. The people advocate it and vote for it by the large numerical majority of two-thirds in favor of that expenditure. We are now selling the bonds at par and above.

Mr. MARTIN: They are issuing those bonds and selling on the market now.

Mr. COE: They have just sold them. 507

Mr. MARTIN: If they go through such a war as we go through, and when they lose their trade and property—$115,000,000 at a time—and lose their railroad interest, then they will have a different story. When we speak of these bonds, and our ability to pay, and all this kind of thing in answer to all that, there is an argument behind it all. Dozens of legal questions come up; dozens of questions, that I will not discuss here, because you are all familiar with them, are presented to the people. These 508
legal questions are urged by those who would take advantage of them, and do not want any of this debt paid, and it is presented in that light to the people of Tennessee. This has got many people indifferent about the debt; and they reason themselves, I believe, into the belief that they are not able to pay it; and I am confident, from the way things go on,

509 that they will think more strongly than they do now, that they are not able to pay it.

Mr. PRATT: I am afraid some of them got discouraged.

MR. MARTIN: Perhaps they have; I admit myself that I have been a little discouraged, and favored not paying the whole of it.

Mr. COX: I am going to read you several communications. I have some papers here which I will read, showing what their creditors are willing to do,
510 and it amounts to this, and that I want to say it seems to me that the position of this debtor is one of temporary embarrassment. The war is over. We have started upon an era of prosperity. We have just begun, as we believe, to renew this country, and it is destined to be great beyond all precedent. Four or five years will see a totally different state of things. We shall laugh at each other if we ever meet again in five years. We are like a parcel of debtors who are demoralized. We have been tram-
511 pled over by an army; we have been run down by a miserable currency; we have been prodigal; we have fooled away our patrimony; we have been intoxicated, not with whiskey, but with paper money; we have been spending it as though no day of reckoning was ever coming. You see already a great difference between now and three years ago, and you will see more day by day; people are everywhere cutting down their expenses; rents are not more than one-third what they have been. This city
512 itself is under bond and mortgage for almost the whole of it. Such is the general condition of things. It is not peculiar to you, but common to the whole country, and if your great State begins to be demoralized it will go like wildfire, the country will go to ruin, and we will all lose our manhood, if you and such as you are going to give up this question. Now, then, what you want is instant relief. If your

State was to pay one-half the interest for five years, 513
and then a little more, and then a little more, you will come out well enough. The interest on this debt now, at six per cent, is $1,500,000. Cut this rate down one-half for a time and breathe, and then see the result. Now, you want $750,000. Pay one-half for a certain number of years. Then take another spell of five years, and so throw it on the future, when the restoration of this country is going to be perfect and entire, and greater than we have ever dreamed of. There is no reckoning the value 514
of the Southern country when it is reinstated in all its energies and industries. I do believe that from this very day we have begun such a career of prosperity. Now I have before me, that I shall read you this evening, several statements looking to that idea; I believe that can be accomplished, and am sincerely of that opinion. If that could be done, if the State of Tennessee could come out of this embarrassment with the principal of their debt undiminished it would be better than that the whole 515
debt should be given to it by a system of indifference. The effect would be incalculable. I have seen the State bonds of Indiana sell at 17 cents on the dollar, the State of Illinois at 14 cents. I have seen the State of Ohio sell at 50 cents, and have been personally concerned in it. Now I am not an old man, and yet all that is within my own business career. I have seen the State of Pennsylvania pretty well down in poverty, and that remark will give a chance for Mr. Comegys to say something. 516

Mr. COMEGYS: I was going to say, that when General Jackson broke down the Bank of the United States, the State of Pennsylvania was flooded with what we called wild-cat banks, to such an extent that nobody dreamed we could live under them. Just about that time the State entered upon its system of public improvements—you know about that,

517 Mr. Savage—she could not pay her interest, her debt was so great. Her credit was a laughing stock in England, and you all remember the story of Sydney Smith, the great satirist, who once, in a conversation with an American, pulled out a drawer, and said, quoting language which I am almost afraid to quote, "Would to God you were as I am, except these bonds," exhibiting, as he said it, a lot of Pennsylvania bonds. They went down to forty cents on the dollar, and the State was utterly ruined
518 and helpless. But better counsels prevailed, and the interest which lapsed for a year or two was recovered again. She stood up to the mark, and that debt, which was, at the time, nearly $40,000,000, is now reduced to under $20,000,000; and but for the war, would be nothing. And this was because, as I think, she stood up to to the work, hard as it was; and we in the city of Philadelphia had to contend with what you have in New York here. We had to contend against the population of the country, who
519 opposed all the legislation we made in the city; but I am proud of the condition of Pennsylvania today; and it is all owing to the fact that there were enough people there who, however heavy they felt their burden to be, determined to bear it, and they did bear it.

Mr. ARLEAGE: Your country did not become disorganized in the labor system; your country did not lose, at one dash, all its property; it is a different thing; you got embarrassed, but you had all your
520 property there.

Mr. COMEGYS: I admit the difference in the conditions of the two States.

Mr. MARTIN: I believe Mr. Coe said, at one time, that Ohio, got down as low as fifty cents. In 1840, did not Indiana compromise for fifty cents on the dollar?

Mr. COE: It compromised for that on new bonds.

Michigan was in a condition worse than that. The 521
State debt went down very low. Now Michigan has no debt. The Governor was here two or three weeks begging me to get the balance of that interest in at 4 per cent. We have got the money on hand, and nobody is willing to come in for it.

Mr. MARTIN: Neither of them had one-half of their property taken away at one stroke, and half their ability to pay for it.

Mr. PRATT: I do not think you have had taken one half the property. 522

Mr. MARTIN: I have not the slightest doubt of it, in the destruction of property, stock, and everything of that sort. I can show you the item, $115,000,000 in the item of slaves, and then stock of every description was carried off.

Mr. COE: You did not destroy any property in changing slaves from property into productive beings and taxable creatures. You really did not destroy any property whatever in that item. You changed the relations of men to each other, but I 523
do not think you destroyed anything.

Mr. SAVAGE: The slave was a steady, reliable, certain element of taxation and production to a very large extent, and they were equal to a little over one-third of the landed estate, as these reports would show all along the line, and they paid more than one-third the taxes, to say nothing about their labor. Now, you say, turning loose has done no injury. They are to-day one of the heaviest expenses we have got on hand, and make up nearly 524
one-half of that item of $700,000 of the expense of administering the State government.

Mr. COMEGYS: If the black population were now lifted out of Tennessee and transferred to Central America or Africa, how would the question stand then, as to gain or loss?

525 Mr. SAVAGE: We would be in about as good or better condition than we are.

Mr. COMEGYS: Are they producing more than their cost of maintenance?

Mr SAVAGE; No, sir. I would prefer they were every one away. There is another item of the losses that you do not count; our stock, horses, cattle, and everything went. Our currency went to ruin and was destroyed, and our agriculture went to ruin. These are items; my friend said one-half.
526 Take our personal property of all sorts. We were cleaned out. We were literally stripped of everything but our lands at the time.

Mr. ARLEAGE: The losses are not the main thing. It is our non-productiveness at present. What we have is non-productive. The best farms we have in the country will not pay the taxes. There is no manufacturing in Tennessee. Cincinnati, that you spoke of, manufactures more than the whole State. We *were* a producing people, but we have been left
527 without manufactures.

Mr. PRATT: Do you not produce corn, wheat, tobacco and cotton?

Mr. ARLEAGE: Yes, sir.

Mr. PRATT: And have got your railroads to take it to market?

Mr. ARLEAGE: Yes, sir.

Mr. MARTIN: I am living twenty-five miles from the railroad, and I pay to-day a little more per hogshead to get goods to the Mississippi than I paid by
528 wagon before the war, and the reason is because we are bound to go by railroad, because the bridges are not put over the streams.

Mr. ARLEAGE: You asked me if we raised wheat and corn, and tobacco; we do. What is the consequence? You take a farmer worth $25,000 or $30,000, and if, with all your productiveness, you cannot pay the tax, that is the test.

Mr. PRATT: But the ground has not got a blight upon it? 529

Mr. ARLEAGE: No; but your system of labor is broken up, and you have nothing to produce.

Mr. PRATT: Cannot you hire these people?

Mr. MARTIN: Yes; but you cannot hire that slave labor upon the farm. You can hire them for a month or a year, now, but you cannot get the bulk of them to go on to a farm to work.

Mr. PRATT: I have got some farms in Maryland; 530
I do not have the difficulty you speak of. I get an income. I rent my farms out on shares, and I get an interest on the cost of them.

Mr. ARLEAGE: Yes; but you have a good market.

Mr. PRATT: The same as you have. Your Tennessee tobacco is sold there right under my nose all the time.

Mr. ARLEAGE: And then, as far as the State is concerned, you have more manufacturing in the 531
State than we have.

Mr. PRATT: It pays the State nothing.

Mr. ARLEAGE: Your manufacturing interest, there is a consumption for your producing interest.

EVENING SESSION.

FIFTH AVENUE HOTEL, } 532
March 8. }

Mr. COE: I now read to you, gentlemen, two or three communication which are entirely gratuitous as far as we are concerned. They are rather thrust in upon us by some of the bondholders, but they will show how the bondholders feel. The first and most serious is one signed by the largest number of

533 bondholders which, I suppose, could be brought together in this country, held by such houses as Brown Bros. & Co., Drexel & Morgan, James G. King and those who represent more particularly the European branch of this question; and there is one gentleman from Chicago who bought, just as the war ended, I think, something like a million dollars of these bonds. It so happened that he kept his accounts at our bank, and we paid for those bonds. They seemed to come in by the bushel. I was as-
534 tonished at his confidence. He unites in this paper. This communication has been prepared with a view of submitting it to your Legislature, but it has not yet been done. As soon as this committee was spoken of, it was thought best to wait and, through us, allow you gentlemen to discuss it here first. I will read it.

Mr. SHEPHERD: Whom do you say that is from?

Mr. COE: It is from sundry bondholders that I have already mentioned. I will read you some of
535 the names: Brown Bros., Drexel & Morgan, Jas. G. King & Son, Ward, Campbell & Co. (who represent Baring Bros., of England), George W. Stanton, George Smith (he is the largest bondholder, I think), and others. This is a regular communication now, gotten up to submit to your Legislature. It is addressed to the Governor.

NEW YORK, Feb. 15th, 1877.

536 *To His Excellency James D. Porter,*
Governor of the State of Tennessee:

SIR: On the 26th of December last, we had the honor of addressing to your Excellency a letter on the disordered condition of the public debt of the State of Tennessee, of which we are owners and the representatives of owners of a large amount, and of conveying to you in same an expression of

our confidence and belief that a permanent adjust- 537
ment of the debt on a basis equitable to the holders
of it and honorable to the State was practicable,
begging that your Excellency would recommend to
the Legislature to appoint a commission to come to
this city and confer with the creditors of Tennessee,
with a view of bringing about such an adjustment.

We have the honor to acknowledge the receipt
of communications to us severally addressed by
your Excellency, accompanied by a resolution of
the Legislature of Tennessee, approved on 27th 538
January, ult., in which the holders of the public
debt of the State are invited to submit to the Gen-
eral Assembly, through your Excellency, proposi-
tions for an adjustment of said debt, and at the
same time to most respectfully express to your Ex-
cellency, and through you to the Legislature and
people of Tennessee, our great regret and disap-
pointment that the Legislature did not think it ex-
pedient to appoint a commission to come to New
York, to confer with the creditors of the State for 539
the purpose mentioned, because such a conference
we still believe would have developed a plan of
adjustment that, while doing equity to the credi-
tors of Tennessee, would, by bringing her revenues
and finances into harmonious and easy working
order, restore her credit, and again place it firmly
on the high and solid ground it once occupied, offer
encouragement to capital to seek employment with-
in her borders in the development of her unsur-
passed natural resources, and result in the greatest 540
good to the people of the State generally, enabling
them to transmit to posterity, together with the
good name which they inherited, a heritage far
richer than had come down to them from their
fathers.

We have carefully considered the liabilities and
resources of Tennessee.

541 We know that her great wealth of mine, field, and forest are only in the infancy of development.

We know, also, how much the future development of the vast, but now comparatively latent resources of the State depends upon a restoration of her credit and the re-establishing of her financial system on a sound basis, and knowing, moreover, that the public creditors of the State would be benefited, in common with the people of Tennessee, by a restoration of her credit, and by giving her a
542 healthy fiscal system, we beg leave to submit to your Excellency, and through you to the Legislature and people of Tennessee, the following propositions as to what can be done by the people of Tennessee, with the co-operation of their public creditors, for the immediate adjustment of their public debt, and for its ultimate extinguishment in an easy, gradual, and feasible way—a way which, if adopted, we feel very sure we hazard nothing in saying will be productive of the most beneficent results to the
543 people of Tennessee.

It will be observed how essential to the success of the plan we submit for present adjustment and ultimate extinguishment of the State debt, will be the cordial co-operation of both debtor and creditor, and to what extent we propose that the public creditors of Tennessee shall contribute to its success.

We propose:

1. That the revenue laws of the State shall be amended so that the collection of taxes may be
544 assured at the time or times when they become due and that at the smallest possible cost to the taxpayer.

2. That the reforms proposed and recommended to the Legislature by your Excellency in regard to the cost of county criminal prosecutions be enacted into a law.

3. That the expenses of the State Government be 545
reduced to as low figures as is consistent with the maintenance of its dignity.

4. That the present rate of taxation be maintained, and that the other sources of revenue be not diminished.

5. That the State levy annually a special tax of one mill on the dollar of taxable property, the proceeds of which, in every year, together with any surplus revenue, shall be used in the purchase, 546
cancellation, and destruction or the new issue of bonds which it is proposed herein to issue for existing bonds and past due coupons of July 1st, 1877.

6. That the Legislature pass a law authorizing the funding of all outstanding bonds of the State, of all past-due coupons thereon, and of the coupons which will fall due on July 1st, 1877, into new bonds of the State bearing date July 1st, 1877, and 547
having fifty years to run to maturity, bearing interest for a period of five years from their date at the rate of three (3) per cent. per annum; for a second period of five years thereafter interest at the rate of four (4) per cent. per annum; for a period of five years from the termination of the last mentioned period interest at the rate of five (5) per cent. per annum; and thereafter, until maturity and payment, interest at the rate of six (6) per cent. per annum. Interest upon each bond to be payable semi- 548
annually on January 1st, and July 1st, in every year from and after its date, and the coupons evidencing it to be receiving by the State for all taxes and dues payable to the State; and bonds to be for $100, $500, and $1,000 each.

The debt of the State, as may be readily ascertained, will be within her control and easy power to

549 manage and protect from the start, if, as we sincerely hope may be the case, the plan herein outlined is availed of, and we may add that our aim has been to make it within the easy power of the people of Tennessee to avail of it.

As will be perceived by your Excellency, the Legislature and people of Tennessee, the public creditors of Tennessee, in acquiescing in this proposed plan of co-operation between them and the people of Tennessee for restoring the credit of the State,
550 and ultimately extinguishing her public debt, will voluntarily relinquish about $7,000,000 of their claims against Tennessee—an amount equal to about one-third of the entire amount of her public debt.

On the other hand, we propose that the people of Tennessee adopt the easiest and simplest mode which we can conceive of for the ultimate extinguishment of their entire public debt, a mode which, while it will only produce the very moderate annual sum of $268,000 at the present low valuation of prop-
551 erty, will, by its silent and sure work, pay off the debt completely, while, by its operation, it will so reduce the amount upon which, under this plan, interest will require to be paid, that at the expiry of each period for an advance in the rate, the reduced amount for which interest will have to be provided, and the certain increase in the value of property, will work togther to make the present rate of taxation quite sufficient to meet all demands upon the State.

552 During the first fifteen years of the currency of the proposed new issue of bonds we estimate that the proposed special tax for its ultimate payment will pay off between $5,000,000 and $6,000,000 in bonds, allowing twenty per cent. of the tax for its collection and the expenses connected with buying bonds with the proceeds.

When it is considered that this can be accomplished at so small an annual charge to the people

of Tennessee, and that such certain beneficial re- 553
sults to them are sure to follow, we have the greatest confidence that their loyalty to Tennessee, their determination to preserve and perpetuate her honor and good name, will be sufficient to induce them to make the manly effort to that end of unitedly raising a one-mill tax on their property annually.

We are quite well aware of the partial failure of crops in Tennessee in the years 1873 and 1874, and of the depressed condition of business, and of all industries in the State, but throughout the coun- 554
try their exists the same depression — stagnation.

In full recognition of this depression and stagnation, which there is every reason for believing will soon give place to better times, we have in the plan herein submitted for a rearrangement of the finances of Tennessee, made her obligations within her means and evident ability to meet now.

With the existing rate of taxation, and the proposed special tax for the extinguishment of the debt, 555
which together make a five-mill tax, it may not be improper to compare the rate of taxation in the States which border on Tennessee:

	Mills.
In Arkansas the rate is	10
In Mississippi the rate is	$6\frac{1}{2}$
In Alabama the rate is	7
In Georgia the rate is.....	5
In North Carolina the rate is.....	$3\frac{3}{10}$
In South Carolina the rate is.....	12
In Virginia the rate is.....	5
In Kentucky the rate is.....	$4\frac{1}{2}$

556

In conclusion, we beg to express to your Excellency, and through you to the Legislature and people of the great State of Tennessee, our confidence that all will unite with us in this effort to

557 make it possible to avail of the proposed co-operation of the creditors of Tennessee to bring about so desirable a result as the re-establishment of her credit on a plan so favorable as we have herein outlined, and we have the honor to be, your obedient servants,

GEORGE SMITH, of London, England,
by GEDDES & SMITH, Agents, &c.
BROWN BROS. & Co., Agents.
DREXEL, MORGAN & Co., Agents.
558 E. D. MORGAN & Co., Agents and owners.
JAMES G. KING'S SONS,
as agents for bondholders.
WARD CAMPBELL & Co., agents.
G. W. STANTON, JR.
P. GEDDES.

We concur in the foregoing:

CALVIN STEVENS,
by C. AMORY STEVENS, Attorney.
559 J. V. CLARK, President, Chicago,
per THOS. G. ROBINSON
WM. G. CREAMER, No. 96 John Street.
CHAS. S. HINE, New York.
A. ISELIN & Co., as Attorneys, New York.
W. R. JENKINS, New York.
MRS. JOSEPHINE S. NEWCOMB,
by H. POMEROY, No. 54 Broad street.
GEORGE WATSON, Chicago.
per JAS. H. SMITH.
560 JNO. H. MACY, President.

HENRY E. JOHNSTON,
JOHNSON BANKHEAD & Co., Agents,
THOMAS F. ANDREWS,
M. ABRAMS,
WILLIAM DE GORY,
SAMUEL L. PETERS,
WILSON, COLSTON & Co., Ag'ts,
JOHN S. GITTINGS,
} Baltimore.

Mr. PRATT: Before that paper passes out of the 561
discussion I would like to make a suggestion. They propose there only to make coupon bonds. They propose only to make $100, $500 and $1,000 in denominations. I would suggest that they might give the privilege to people of having inscribed or registered bonds.

Mr. COE: That would be a clerical matter.

Mr. PRATT: It would be proper to put it there, if the paper is to go to the Legislature. Many would like registered bonds. 562

Mr. COE. They might make convertible registered bonds as the government bonds are now.

Mr. PRATT: That is what I think ought to be stated. The government bonds might be registered into $5,000 apiece. A great many parties prefer to have their bonds registered, because coupons are lost.

Mr. COE: I will read another paper from the same gentleman which came enclosed with it.

563

Mr. COMEGYS: What has been the ratio of increase of population in your State, in round numbers?

Mr. SAVAGE: I would not be able to tell you without looking at the tables; not a very rapid increase, though, lately. There has been a considerable emigration from Tennessee.

Mr. COE: It is the same disturbance that prevails here. The emigration from Europe has fallen off for a time, and I think our population is less in the 564
same way.

Mr. SAVAGE: We have heavy emigration to Texas, Arkansas, Kansas and California, but more particularly to Texas, Arkansas and Kansas, and some to Mississippi.

Mr. COMEGYS: Your population is not decreasing?

565 Mr. SAVAGE: I don't know as it is, but the increase has been very small indeed.

Mr. COMEGYS: Is there a falling off in the increase since 1865 to 1870?

Senator MARTIN: I think so.

Mr. COMEGYS: How do you account for that?

Senator MARTIN: I don't know, unless it was the break down in 1873. I suppose the general stagnation in trade everywhere has had something to do
566 with it. Of several little colonies of Pennsylvania people that came down there, some became dissatisfied and moved away. I have known one or two German colonies who settled there previous to 1870, who seem not to have succeeded very well. Some have gone and some stayed.

Mr. COMEGYS: Is it too much to suppose that under favorable circumstances, which we hope might follow the adjustment of this debt, your population might double?

567 Senator MARTIN: I think it would be rather an over-estimate.

Mr. COMEGYS: What! with a railroad to Chattanooga?

Senator MARTIN: I don't look upon that road as amounting to anything so far as emigration is concerned particularly. We are glad to have the road; it will help us of course, but so far as getting there is concerned, we have every facility for getting people *to* Tennessee; we have plenty of lines of railway
568 to get them there if they want to come at this time.

Mr. COMEGYS: Railroads always do bring population, if rightly managed.

Mr. MARTIN: I will tell you what it will do—it is a notorious fact, during the last four or five years, that they have gotten up large excursion trains

going to Missouri, and particularly Texas, and even 569
California, taking them at very low rates, and our own roads will get up excursions at low rates to carry men to Texas, but never to bring them to us. I take it that there is not a demand for anything of that kind, and I have never heard of an excursion of that kind from New York, Philadelphia, Baltimore, or any other point, to bring men to Tennessee, but I know of three excursion trains that have left my place, everyone going to Texas.

Mr. COMEGYS: They have been invited by the 570
people of Texas?

Senator MARTIN: Yes, sir.

Mr. COMEGYS: Why shouldn't you, then?

Senator MARTIN: Because we don't feel able to pay them. We had an agricultural bureau there that the people made a noise about. I voted for Killibrew, four years ago, who was at the head of it, who has done something to build up and advertise the resources of Tennessee. He has written a 571
large volume upon the subject, and he has held us up in a very favorable light of course. He has, perhaps, put it more so than the reality. Well, now, there is a clamor, and the people complain that we are governed as politicians. Now, if we cannot control them, we must go to our masters; they have said that the bureau must be repealed. That is an evidence of public sentiment, You speak of bringing people there by getting up excursion trains. They will not even tolerate what little exercise of 572
power we have got.

Mr. COMEGYS: Will the doubt reduce itself with the increase of population?

Senator MARTIN: There is no question that public enterprise is well received at some times, and there are other times when men will stop their ears when you begin to talk with them; and that is the

573 case with Tennesse. The man that talks about it now in Tennessee will find that people will put their fingers in their ears, and not hear it. When I say that, I know what I am talking about, and I know that is the condition there. I know it is impossible to get the people to move in any experiment of that kind at present. I think the time will come when it will be different. I hope for the future, and have very strong hope myself.

Mr. SAVAGE: And that road you speak of there
574 will never add anything to the wealth of Tennessee, or very little. It runs along the skirt of the mountain, and the whole object of it is to effect the southern district. The land it runs through could have been bought, before it ran there, for a quarter of a dollar an acre.

Mr. COE: It comes in connection with the congeries of roads that ran the other way.

Mr. SAVAGE: There are some iron manufactories there, if it turns out to our benefit at all it will turn
575 out very well for us. Something was said about Killibrew in the Legislature a while ago, and I said, yes, that they talked to me as in the "Arabian Nights," so far as he was concerned; it was a beautiful picture to talk about. Just as I was starting away the other day he came around and said, "All that is in my book is true, but it might as well be in the sea, for it is not available. It is doing us no good. It don't pay us any taxes." Those were his
576 own words. I thought he had painted our railroad system too high, and I told him so. Now, here is a gentleman, a member of the Legislature, who is what I call a high tax man, his father was there and voted for this notorious funding bill, so unpopular in the State of Tennessee, and at the time it was said or shortly afterwards—

Senator MARTIN [interrupting]: I know he voted

for it, and was one of the most ardent supporters of 577
the funding bill in the State of Tennessee, and one
of the most ardent of the Statecred it men in the bor-
ders of the State.

Mr. SAVAGE: He was a large bondholder; per-
haps owning $700,000 or $800,000. I do not know
that he owns any now, but he certainly did at that
time. Now his son has never voted anything else
but the high tax, as we call it—State credit—vote.
It colors every vote he gives to the Legislature.
Well, he and I differ; I said before coming away, 578
"Just write your opinions down and I will present
them, although we may differ;" and this is his let-
ter that I wish to read to you now. The gentlemen
here know that the State credit notion colors every
vote he gives, nearly. He says: "Col. John H.
Savage and Gentlemen of the Committee: In answer
to your request as to what the people of Robinson
County hold in regard to the State debt, I would
state that there is among them a great feeling of
despondency, and of desperation growing out of 579
our failure, not only to make any decrease in the
principal of our debt, but even to meet the interest
upon it. While they have been struggling under a
heavy and onerous weight of taxation, both for
State and County purposes, having made a tremen-
dous effort to reduce our debt in 1869 and 1870, by
the sale of all our State railroad property, and which
did reduce the debt from $44,000,000 to about $23,-
000,000, cancelling thereby a number of bonds of
questionable validity, and claiming several other off- 580
sets, they consider that they are entitled to great
consideration at the hands of our creditors. My
people would scorn anything like a dishonorable
course in this matter, and are willing to pay as much
of this debt as they are able to bear, without op-
pression, but with their local taxation they don't
think it possible to pay more than forty-five cents

581 on the dollar, of the principal of the debt. Very truly yours. J. E. WASHINGTON, Representative of Washington County."

I will read you another letter from Mr. Tolliver, the Speaker of the House, the representative of John C. Brown, the soul, the body, the brain, the heart, and the author of the funding bill: the man who made it, and as Andrew Jackson said, in his speech at Chattanooga, in Tennessee, lobbied it through the Legislature by means not very credit-
582 able. Now, this man represents him, and he as nearly belongs to him as any man could.

Senator MARTIN: And I can say, occupying about the same position to-day in the Senate as Speaker Tolliver does, that he is about as sound on the State credit as any man in the Legislature. He is well acquainted with public sentiment there, and I have no doubt that all his yielding in regard to this matter is caused by the public sentiment. [Mr. Savage reads]:

583 "Hon. JOHN H. SAVAGE, Chairman of the Committee, &c.:

"MY DEAR SIR,—Feeling, as I do, a deep interest in a compromise of the State debt, alike honorable to the State and just to our creditors, I take this method of expressing to you my views of the feelings of this General Assembly and the people on this subject. The power of paying this debt, as you are all aware, is lodged in the people of a sovereign State, protected as they are by reason of
584 their sovereignty from suit or other legal action on the part of the bondholders. This being so, the two legal elements to be considered in this proposed adjustment is, first, ability of the people to pay: and, second, their willingness to pay. Upon the first of these proposals you will agree with me that the verdict of a large majority of this Assembly is, that the State is not capable of paying the debt. This po-

sition is assumed and maintained upon many 585
grounds, among which is the manifest loss of property by reason of the war, the contraction of the volume of the currency, and principally, the impoverished condition of the country. This opinion among the people is largely gaining in favor, and, as a consequence, will be more strongly, even than now represented in the next General Assembly, if this matter is not settled. Now, whether this position is tenable on the facts or not, is not a question. It is sufficient that such is the will of the 586
people, and of this General Assembly. On the second proposal a large element of our people, who are well and fully represented, deny absolutely the validity of the entire debt, urging that the bonds were issued unconstitutionally and without authority of law. Others, not denying the legality of the bonds, yet urge that our condition, as compared with the time when a majority of the bonds were issued, is such that their payment would be unjust and oppressive; while others maintain that no war or 587
funded interest should be paid, on principles both of law and equity.

There is another class largely in the minority in this General Assembly, and it is fair to presume, in a small minority among the people, who admit the justice and legality of the entire debt, and favor its payment. This I perceive to be the complexion of affairs in this General Assembly and among our people. Under this view, in the very nature of things this body will agree to no compromise which 588
does not meet the approbation of the people. It matters not how erroneous public opinion may be—what will the people sustain us in doing? What we want, and actually most need, and in fact, what the people will have is immediate relief. A scaling of the debt without scaling the interest would afford but little relief. In an argument I have made on

this floor, you remember I opposed making any proposition to the bondholders, but favored receiving any they might make; and then I said that my opinion was that a compromise would be offered at the market value of the bonds—two per cent. the first two years, four per cent. the next five years, and six per cent. the remainder. These, I believe, will be endorsed by the people, and confirmed by this General Assembly. I have in this desultory manner undertaken to give you my general observations rather than my own views upon this question; and while I do not accord with many of the opinions coming under my observation, yet I have endeavored to give you my candid judgment upon what actually is the situation.

"EDWARD T. TOLLIVER,
"Speaker, etc."

Col. PEYTON: I would like to show this letter from Mr. Weaver, addressed to Mr. Morrison, President of Manhattan Co., New York. Mr. Weaver talked with me a good deal about this debt, and I asked him to put his views in writing and send it to the committee in New York.

Mr. Shepherd reads it, as follows:

"NASHVILLE, Feb. 23, 1877.

"J. M. MORRISON,
"New York:

"*My Dear Sir*—I write at the request of Colonel Peyton to say that I have had a full and free conversation with him in relation to the bonded debt of our State. I can, therefore, give you my views on that subject more fully than I can write them at this time. I am, as a citizen of Tennessee, anxious to see this question disposed of, and in such a way as will be both creditable to the State and satisfactory to the holders of the bonds, if it can be done.

And, while I would regard a proposition from the 593
holders of our bonds to accept two-thirds of the face value of the bonds and accrued interest in a new six per cent. bond as an exceedingly liberal proposal on the part of the holders of the bonds, and one that I would say ought to be accepted by the people of Tennessee without hesitation, I regret to say that I do not believe that the proposition would be accepted by the present Legislature. The impression that has been made on my mind is that a majority of the present Legislature is in favor of 594
the compromise of fifty cents on the dollar, and no more; while others favor all sorts of propositions from non-action up to a compromise of thirty-three and one-third cents on the dollar. Now, the question is, if this bonded debt is left open, to enter into another canvass, will the interest of the holders of our bonds be improved or otherwise? I am inclined to the latter opinion, and therefore regard the present as a favorable time for a compromise of the State debt, if a compromise we must have. It 595
may be that if a direct proposition was made by the holders of our bonds to accept two-thirds of the face value of the bonds and accrued interest, that the Legislature would accept it, and, if so, I would regard it as a favorable settlement for the bondholder. If such a proposition should be submitted, I will certainly do all I can to have it accepted; but, as before remarked, I doubt its acceptance. And now, in conclusion, let me say that if I owned every dollar of the bonded debt of the State of Tennessee, 596
I would rather have a new six per cent. bond *now* on the basis of fifty cents on the face value of the bonds and accrued interest, stipulated in face of the bond that it was exempt from taxes, and the coupons and bonds, as they fall due, receivable by the State for any and all dues to it, than to hold the bonds as they are and take my chances for some-

597 thing better hereafter. I believe such a compromise would be accepted and carried out in good faith.

Yours truly,

D. WEAVER.

Mr. COE: If I understand the situation, gentlemen, it is this: at forty cents, on $268,000,000 taxable property, you will receive $1,100,000, and then in other miscellaneous forms you will have some-
598 thing like $500,000 more, that is $1,600,000. Throw off $100,000 for losses, will leave $1,500,000. Now, that is the revenue that is possible. You want $750,000 to pay three per cent. on $25,000,000 of debt per annum, and then, if you put your expenses at the largest sum, $750,000 more, you have the million and a half. Now, in my judgment—I don't know how these other gentlemen of our committee feel—in my judgment, looking at the whole case, that proposal of the bondholders is a fair one to
599 recommend. I am willing, as one of this committee, to express the opinion that that would be an equitable and proper compromise for the years to come. I think the proposal of those gentlemen is a reasonable and a just one. It appears to me that it is one which the State of Tennessee can, if it chooses, meet. I am entirely satisfied if we were a committee of creditors, and you, gentlemen, were the debtors, and it was not a public, but a private affair that we were discussing, this would be a com-
600 promise that would be your bounden duty, under all the circumstances of the case, as we have studied them before you came, and as we have considered them now, to carry through as individuals. I am satisfied that that is the bounden duty of the State of Tennessee. I think it can be done; and believing it can be done, I think it ought to be done. I believe, furthermore, that the gentlemen who are

here composing this committee, will recommend 601
something upon that platform. I have struck the matter at once without any circumlocution, because we have not time to prolong upon it. I should like to hear what the other members of the committee say.

Mr. PRATT: I am decidedly of the opinion that the State of Tennessee wants some instant relief. I am perfectly satisfied, from what these gentlemen say, and what I heard before, that it is absolutely necessary that they should have some instant re- 602
lief. I think the State of Tennessee is rich in minerals, and they have got lands, and I have no doubt that they will increase in population and in wealth, and I have no doubt that they will increase in a greater proportion and ratio from the minute they begin to pay their debts. Now, if the State of Tennessee can get relief from present payment of these back coupons that are hanging over them, and from the coupons coming due the 1st of July next, they must have from their taxation a very consider- 603
able amount of money to enable them to set their affairs in order, and put them in shape; and that they can easily pay the three per cent. interest for five years, and have a considerable fund, which will enable them to start a sinking fund. That proposition here is different from the mode in which we carry on our sinking funds in Maryland. It is a very good proposal, I think. We start our sinking fund, and collect the interest on that sinking fund, and add to it. This proposal is to extinguish $268,- 604
000 per year. Of course that is a relief to them at once—so much tax less. I am decidedly of the opinion that the State of Tennessee ought to be willing to undertake to make this compromise. Their bonds are held all over the world, in all places and in all directions, and it is not so easy a matter to ignore them. This recommendation of the com-

605 mittee would induce the bondholders to come in and compromise; therefore, I am decidedly of the opinion that the statement of the chairman is what our committee are ready to agree to, and what the State of Tennessee ought to accept, if they will do it. That is my opinion about it. I do not think the bonds could so easily be reached in a proposal to scale the debt and cut it right down; the State then to go on and pay six per cent. interest. It would not give them the relief they would get in
606 this proposition. I am of the opinion that the proposal that is presented by our chairman is a very equitable one, and one that ought to be accepted by the State. I should be willing to accept it, and therefore, to recommend it.

Mr. SAVAGE: Allow me to read these resolutions before you go further, so that you may see exactly what we have to do.

Mr. PRATT: I take it for granted that these gentlemen who come here don't come here to make any
607 bargain with us.

Mr. COMEGYS: That they merely come here to have a friendly talk with us, and to report our conclusions.

Mr. COE: Certainly. We are merely expressing what, under all the circumstances, seem to us to be a fair statement of the case.

Mr. SAVAGE: O, certainly not, gentleman.

Mr. COMEGYS: Present your statement, again,
608 please.

Mr. COE: There are $268,000,000 of taxable property; 40c. tax on that amount would make about $1,100,000. Revenue from other miscellaneous sources, $500,000—say $400,000, throwing off one hundred thousand—will make $1,500,000 per annum. Those are the receipts. The payments are: current expenses of the State, $750,000; 3 per cent. on

$25,000,000 of the debt is $750,000 for five years. 609
That would relieve the treasury for five years. It seems to make the way clear according to all the light we can get upon it from various sources.

Mr. TRAVIS: I would move that, after having these resolutions read, putting the gentlemen in possession of our powers and duties here, that they then retire and discuss the matter among themselves.

Mr. COMEGYS: We understand the subject perfectly now, I think.

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Mr. TRAVIS: We thought perhaps you might desire to discuss the matter among yourselves, without our committee being present.

Mr. PRATT: I would like to repeat what I said here. In my humble opinion, our friends in Tennessee are a good deal discouraged. But I want to say that to him that hath, a great deal shall be given. The minute they begin to pay these debts, they will find plenty of money brought in to them. So long as they do not pay—I want to tell you one 611
of the reasons enterprise does not go to your State. They don't want to go there; they don't like to go to a State that doesn't pay. Now, I think if you begin in this moderate way that Mr. Coe has presented here through this petition of bondholders, you will find your load very easy. You will insensibly slide into the payment of your interest. Your bonds and credit will be good, and if you want to borrow for anything, I hope you will stop where you are, and not create any more debts. We had 612
to do it in Maryland to get out of debt; we have no difficulty in paying our interest. The little city of Baltimore now manages a debt of $7,000,000 or $8,000,000 more than the whole State of Tennessee, and we do it with the greatest ease in the world. As a State, our 6 per cent. bonds are worth from 110 to 112 and we have no difficulty whatever in doing it.

613 I want to know, if we don't pay our interest, what would we do? I put it to any of you, gentlemen here, what would we do if we defaulted in our interest, whether we could borrow a dollar in money?

Mr. SHERMAN: What are the State bonds of Tennessee worth?

Mr. PRATT: The State bonds are selling at about forty cents on the dollar. I was passing, in 1843, throughout the State, when Maryland was in a state of almost open repudiation, and I saw the bonds
614 quoted in the exchange at 40 cents on the dollar; I called my friend's attention to it, and said: "Here is the great State of Maryland, its bonds selling for 40 cents on the dollar." In two or three years afterward I saw those same bonds sold at 112, just because they concluded to pay the interest, and they did pay it. The minute you start your machine out of the ruts it gets on to smooth ground and away you go. If the Legislature of Tennessee will accept this proposition, I have not the slightest doubt that
615 long before the five years come around they will say: "We can pay the whole of it." They save $7,000,000 by this reduction of interest; that is a large sum of money; and the sinking fund that is proposed will gradually reduce the debt.

Mr. COE: Gentlemen, Mr. Travis has suggested that our committee might desire to withdraw and to deliberate a little while together on this great question, before we finally give you our unanimous state-
616 ment. If you will kindly accept the suggestion that he makes, and give us an opportunity to confer together alone, say for an hour, we may hope to arrive at a conclusion to-night. If not, we will wait on you early in the morning. Will that be convenient?

Mr. SAVAGE: Certainly.

Mr. COE: I don't want to be any more emphatic

in the expression of opinion than accords with the 617
views of the other members of the committee.

Mr. SHEPHERD: What I was going to say, Mr. President, was, that before we retire for the purpose of the commission arriving at some calculation, it would be well enough probably for the individual members of the Tennessee Legislature to give expression to their views about it. I have not troubled the committee with an expression of my views upon this question, but, as Col. Savage remarked, I am one of those who are called strict State credit 618
men. It is with profound mortification that I appear before a committee representing the bondholders of the State and ask for a compromise of one iota of the indebtedness of the State. If we had the ability, if it were possible in any way that I can conceive of to pay this debt, I would say that it was the duty of the people of the State of Tennessee to pay every dollar of it. That is where I stand, and I would scorn any settlement of it except that which was entirely honorable to the people of the entire 619
State of Tennessee. I am exceedingly anxious to have it settled, because, gentlemen, I say to you, in the utmost candor, that if this commission fails to settle the debt of Tennessee, in my judgment there will never be a dollar of it paid. I can see that feeling growing in the people. Hence, being desirous of maintaining the credit of the State, I am exceedingly anxious that this commission should make some proposition that we can carry back to the Legislature, and that we know the Legislature 620
will adopt, and that the people will ratify. I would be unwilling to recommend to the General Assembly the ratification of any proposal that the people of Tennessee could not carry out; because if we make terms with you gentlemen, or with bondholders through you gentlemen, it must be upon the basis that we can carry out. Now, the argu-

621 ment set forth in the letter of those gentlemen, Mess. Morgan and others, is fallacious on several considerations. If we were to carry that proposal back to the General Assembly, it would probably get half a dozen votes in the whole Assembly. They would not listen to it, they would not hear us if one of us were favorable to it, and if one of us were to go back and report that proposal, with the recommendation that the Legislature adopt it, they would not hear us make a speech in support of it,
622 for the reason that the members of the General Assembly have discussed these figures, and have studied them closely, and they know that the people would not submit to a rate of taxation sufficient to carry out that proposal in good faith. The argument is fallacious for the reason that it assumes that more money will be derived than we possibly can get from the sources set forth in the communication. Now, in the first place, the valuation of the property is put down at $268,000,000. The remarks of these
623 gentlemen in regard to the mode and manner of our assessment, and in regard to the fact that the value of property had materially decreased since the assessment was made, were exactly and literally correct; and they have passed already a bill through both Houses to repeal the assessment law under which this $268,000,000 was reached. They will restore the old assessment law, providing that the justice of the peace in each civil district shall assess the value of the property. That will reduce the
624 valuation of the property to at least $225,000,000. Now, according to these figures, I have estimated that the gross receipts from the property tax is $900,000. I take off ten per cent. to count it in round numbers, to cover the cost of collection, land sales, and the expenses incident to a collection of revenue. We have adopted a very cheap and expeditious mode of collection, so that, in my opinion,

twenty per cent. to allow for the collection of it is too much; ten per cent will cover the whole of it. We produce, then, $800,000, net, from the property tax. The privilege tax cannot be estimated at more than $250,000, and I really believe from the disposition that I have seen manifested, and in view of recent decisions of our own Supreme Court, that it will reach as much as $250,000 from the tax on privileges. The Comptroller in these reports that we have here, shows that for the two years which are covered by the report the receipts from that source were about $531,000. Now, my friend, Col. Savage, is a member of the finance committee in the lower house of the Tennessee Legislature. I am informed by him, and I know from the fact of bills being introduced into the House, that a very strong effort is being made to cut down this privilege tax. Why, sir, we tax everything you could possibly think of, and call it a privilege. The Constitution limits the Legislature in the mode and manner of collecting taxes, and also in the subjects of taxation. For instance, we are allowed to tax property according to its value to lawyers and merchants. Now, under the word "privilege," the Legislature, with a view to producing money to discharge the interest due on the public debt, have called every conceivable business you can think of a privilege. They have taxed the lawyers, merchants, and doctors, hotel keepers, and have even gone on down to taxing dogs—declaring that the keeping of those animals were privileges. The Supreme Court has rendered a recent decision, in which they set forth that a mere ownership of property, or the keeping or using of property which is lawful of itself *per se*, and which a man has a natural right to acquire and use, is not a privilege that can be taxed under the Constitution. Under that decision of the Supreme Court a great many departments of business which

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629 are altogether strictly legitimate will be excluded from this list of privilege taxes. They also tax law suits. If a man brings a law suit in a Court of Record in our State, he is taxed $5, as a payment for the privilege; notwithstanding the Courts declare that the Courts shall always be open, and that the person shall always be entitled to appeal for any acts done to his property or person. Yet they declare that whatever is secured to a person, he cannot exercise without the payment of $5 to the State

630 Now this course of legislation is produced by the anxiety of the people and of the representatives of the people to produce funds with which to discharge this debt; so that in view of all those considerations $250,000 from privilege taxes is a very liberal estimate. Then I am willing to take the statement of those gentlemen with reference to the amount that will be produced by the new mode of assessing and collecting taxes from railroads, viz.: $100,000. That produces, according to my estimate, $1,150,000 to

631 take off the expenses of the State Government, $750,000—

Mr. COE: Can *that* item be reduced?

Mr. SHEPHERD: Yes, sir. We estimated it at $700,000 this morning, but I am willing to include in that the interest upon the school fund, $150,000 a year, so that it will make the ordinary expenses of our State Government $600,000, instead of $700,000, as we reported it at the meeting this morning. All these gentlemen will agree with me, I think,

632 that this is a fair, just, and liberal estimate. We have left, upon the basis of that calculation, $400,000 with which to discharge the interest upon our public debt. Now, with reference to the reduction of the running expenses of our State Government, it is insisted in that letter, and also by the message of the Governor, that one way of doing it is by having the costs of the criminal prosecutions taxed

to the several counties of the State. Under the system now, the State pays all the costs incident to unsuccessful criminal prosecutions, or criminal prosecutions where the party convicted is unable to pay the costs of the prosecution. They come out of the State treasury. The cost of transporting prisoners the State pays—jailors' fees, &c. It amounts to about $225,000 a year. For the last two years it has not amounted to that, for the reason that the Legislature in 1875 passed a bill changing the grade of offences. For instance, it declared that all crimes, from petty larceny down, should be a misdemeanor, and that the punishment of that class of offences should be imprisonment in the county jail; and they also changed the laws so that the stealing of a sum of $30 and under was petty larceny and a misdemeanor, and all sums over that was grand larceny and a felony. Our present Legislature have repealed that law, and have restored the old law of larceny as it stood before the Act of 1875. This will bring back all the costs again to the State treasury incident to those crimes, and the great body of offenders are those who commit petty thefts of sums from $10 down. Well, suppose you transfer the cost of this prosecution; it has got to be paid by some one. Suppose you transfer it to the counties; then you take the State tax off which now goes to discharge that debt; but here are the citizens of the different counties that will have to pay in the shape of a county tax; so that you give the people no relief. It is simply a different mode of payment; it comes off the people, but is simply paid through a different machinery; that is all. It gives no relief to put it upon the county.

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Well, the record shows that our State government—the expenses of the executive branch of the government and the legislative expenses connected with the government of the State of Ten-

637 nessee—are cheaper than any other government on the face of God Almighty's earth, and you cannot find a government administered as economically as our government is. We absolutely only pay the Governor of this State of Tennessee $4,000. One of you, gentlemen, would not serve as president of your own bank for $4,000. We pay our chancellors $2,500 a year, and all the salaries in Tennessee now are down to the very lowest notch they can be put to consistent with the dignity
638 of the office filled by those gentlemen. The Senate is reducing the salary of the Judges of the Supreme Court to $3,600, the Governor to $3,500, the Chancellor and Surrogate Judges to $1,800 a year. I do not think by the exercise of the most rigid economy in the matter of salaries to our own officers, that we can reduce the running expenses of the State Government below $500,000, and then when you take the $250,000 of interest we are required to pay to our common schools, it makes $750,000, leaving
639 us $400,000.

Now, I made another calculation upon the basis suggested in your letter. $268,000,000@40c. produced net, $857,500; $250,000 for privilege taxes, and $100,000 for the railroads gives $1,207,000, and I take off $600,000 for the current expenses, leaving $607,500, which could be appropriated to the discharge of our public obligations. Now, I think that the very best we can do with the present rate of taxation is to produce $600,000 with which to pay
640 the interest; that will just about reach one-half of the interest upon the present bonded debt as it now stands.

Mr. COE: How much do you estimate?

Mr. SHEPHERD: $600,000. This is the interest-bearing debt. I am assuming that the paper already referred to is true. $600,000 is the most we can produce.

Mr. COE: That is three per cent. on the debt as it now stands? 641

Mr. SHEPHERD: Yes, sir; but what have you done in the meantime with the past due interest account? That is left out in the cold, to use a vulgarism. I believe that with a view to a settlement of this debt, if the people of Tennessee could begin to see the end of it, could see the time when this thing could be lifted off their shoulders, they would be willing to be ground a little more than they are now; and if some way could be devised by which that result 642 could be obtained, I don't doubt we could persuade the legislature to adopt it. But to go along paying interest on a debt they feel they never can pay. Why, talk to a man in Tennessee, and he will say: "We cannot pay the debt, hence it is no use to pay any of it!" Therefore, I say that any scheme that we may devise that looks only to the payment of interest, and don't point out any direction from which relief may come from the burden of the debt, is futile; in other words, unless they can see some 643 way by which the principal of the debt can be discharged as they go along, they will be unwilling to submit to high taxes for the purpose of discharging even the interest upon it. My opinion is, that, if the holders of our bonds would agree to scale the bonded indebtedness, I do not propose to dictate what the terms should be, and also for a short time to scale the interest account, so that we could pay that now, and begin at once to start a sinking fund in order that, by and by, by actual process we will get our 644 people worked up so that they will be willing to endure taxation to pay the interest every year; and also to produce a sinking fund with which our State officers will be authorized to enter the State market and buy up and retire some of our bonds every year; if we can devise a scheme of *that* sort it seems to me practicable, and I am satisfied the people

645 would adopt it. We don't want to repudiate the debt, and I fear if we go back with the proposition suggested and intimated in that communication, that we never will be able to get our people even to hear any proposition. Those are my fears about it. And I want to maintain the credit of the State. I will go further towards it than any man in the State. I came to the legislature as a high tax man. Colonel Savage told you to-day about it, and the remarkable thing about it is, that I was chosen on this commis-
646 sion; if I had opened my mouth in the legislature before I came here, I never would have been elected.

Mr. Coe: I was going to ask of Mr. Sheperd a favor, as he has made a definite and clear statement, to crystallize his views in some form, so that it would be in shape, and give it to us for consideration.

Mr. Arleage: On that subject, I don't think Mr. Shepherd or myself, under the instructions we have,
647 would be permitted to make a proposition.

Mr. Coe: We are not making propositions, nor are you.

Mr. Arleage: All I have to say is, that I would regret very much to go back with a proposition from you, gentlemen, that would be insufficient to meet the purpose. I would regret to go back entertaining the views I have about our State credit. I would hate most sincerly to carry back a proposition that we could not carry through. I have
648 always been in favor of the State paying every dollar she owed, if possible to do so. I am still in favor of it, if we can do it; but now we have reached a period where we have broken down under a difficult and under a very zealous effort to keep up the credit of the State. We have fallen under it. I don't exaggerate that, and don't propose to do so, but we have fallen under it. The people are discouraged,

and if we go back with a proposition we cannot 649
carry through, that is the end of this thing. I regret it as much as you or anybody else, but if we go back with a proposal we cannot carry before the people, why, sir, we go down with it, and you go down with it, or at least the bondholders go down with it too, unavoidably on our part. That is all I can say with regard to it. I do not dictate what our terms must be; give the probabilities of what can be done, and that is all we can do. I can say to you that I have always been a high-tax man, and 650
have been in favor of doing all I could to pay the debt. I told my people, "If you send me to the legislature with a view of doing anything dishonorable on the part of the State, send somebody else;" and while I would be willing to do all the State can do, I would reluctantly take back a proposition that I thought would fail. I mention these things that you, gentleman, may consider them, and consider the side of the bondholders as well as the side of the State. We are in this condition; it is unavoidable. 651
We have got so by the force of circumstances that we could not control; and that is all I can say to you that would be of any advantage to you in this discussion.

Mr. PRATT: Does the gentleman consider forty cents a high tax? You say you are a high-tax man?

Mr. SHEPHERD: It would not be with you, but it is with us.

Question repeated by Mr. Pratt.

Mr. ARLEAGE. No, sir; but we have been unable 652
to collect it. I do not consider it a very high tax.

SENATOR MARTIN: The term we have been using in Tennessee in regard to high tax, for a couple of years past, is this; the men who favor State credit are called the *high-tax* men; the men in favor of paying nothing are low-tax men.

Mr. COE: It does not convey any idea except that?

653 SENATOR MARTIN: That is all.

Mr. SAVAGE: I come here to let my friends do most of the talking, and to hear you. I have got views that as I have indicated to you, are called extreme views; but yet, while I hold these views, I sympathize with my friend who says he would regret very much to carry back a proposal that could not be maintained before the Legislature and the people of the State; and what good does it do you or the bond-holders, or me, or anybody else, to
654 make a proposition to that people that common sense and common experience says we cannot carry out? Now I would like to know. Don't you do your bond-holders a wrong, or yourselves a wrong, and don't you do us a wrong? And although my friend said that the question of willingness to pay was not in this question, I beg your pardon, it is deeply in this question; for, talk as you will, people will do as they please, and what is practicable is a great question for us, and it is of no use to put your
655 face against facts and against wills. We want to do what we can.

I came here with my extreme views, sacrificing them and saying that, for peace and compromise, I will yield my notions of things to settle these debts. As in a law suit, I yield my notions of strict right, and say to my client, "Here is a desperate lawsuit; your adversary has got great skill, ready counsel, and much money; and although you have the right on your side, you had better compromise and get
656 out of trouble." Now I have a notion that your proposition—in fact I shan't advocate it. I could not. I cannot go there and tell the Legislature to do it, because it is not what the people or the Leglature expect. Some of you spoke about Colonel Raglin's bill. He is considered a high-tax man. He introduced that bill. I said to my friends, that if they fell down as low as fifty cents, or forty

cents—the market value of those bonds—that per- 657
haps I might not propose a compromise of that sort, but if they went higher and there was but a single voice in the State to oppose it, I would use it to defeat the compromise if I had the power to do so. Now let us talk plain. You do not approve of this, but I have as much right to my opinion as you have to yours. I hold that I am as honest as any man that lives, and while I tolerate your opinion, I expect to have mine. I have taken the responsibility to say that John H. Savage entertained peculiar 658
views upon that subject, which as a man he had a right to hold, but as a legislator he thought that thirty-three per cent. was the last penny the bondholder ought to have, and I give him that as compromise. I give him that for peace. I looked around and I saw desolation, I saw unhappiness, I saw pauperism everywhere. You may say it is wrong, and we brought it upon ourselves; but gentlemen, it is there. I see the labor of ancestors for three hundred years is gone. My own house is burned 659
down and gone. I would pay you four times to get it back if I had that peculiar kind of property that was guaranteed by the Constitution of the State of Tennessee, and guaranteed by that Constitution of the best government the world ever saw. Why, look here. In 1859 there stood two men in Tennessee—lawyers and men of fine intellect—each had a little family, and each had his sons and daughters and a home, the result of twenty years of toil; and one says, "I am interested in this slave 660
of mine; slavery is guaranteed by the Constitution of the State of Tennessee and by the Constitution of the United States, and it will stand forever." The other man says, "There I have lived for twenty years, and there I have accumulated a thousand dollars. Some say it is against the Constitution to issue a bond, but we think that is a

661 mistake, and we will buy it." The thing runs along; the two men are in their graves, and there is the evidence. The wife of one says, "That man was a fool; that woman's husband invested his property in the 'nigger'; my man was a genius; he invested his property in a bond, and I and my children shall tax that poor widow and her children to all eternity, to pay that bond, while all she has is gone."

Well, I could go further back, but I don't wish to do that. I have reasons that are satisfactory to
662 me. At the time these bonds were issued I say they were issued without authority, and I still say so. I would make my people pay if they could. I doubt if Raglin's bill could get through that Legislature; I think if it got through, John H. Savage would not question it for peace's sake. But unless we make some settlement like that there will be war, and war to the knife. With all respect to the gentlemen here, it is better to tell the truth even if it hurts. Now, this is a matter in which popular
663 will is going to control, and we cannot help it. If I were to return back to-day and ask these people to pay this debt, or compromise it, they would trample me. I am an old fogy, marching in the rear of the column already. You talk about studying politics to-day. That is a political fact; it will stand like the mountain stands, and you cannot argue it out of those men's minds. You may talk to them about Clay and Webster and they will stand right against you. It is better to take them on the value
664 of the bonds. The *World* says they are worth only 40 cents to-day. They are screwed up by artificial means to a higher value than they could be sold upon the market. Now, I suggest to all my people, "If we do make a compromise with these people let us make a solid, effective and rapid thing, and if possible do not let it go along." Why, I would suffer political—yes, natural crucifixion before I would

talk about fifty years. Talk about the credit of the 665
State! I hope we will never be able to borrow another dollar. If I had omnipotent power I would decree that no people should have the right to borrow and to pay the borrowed debt by taxation. And I think this would be a better word. And more particularly, I do not want it written upon my back when I go to the grave that I made a debt or encouraged the prolongation of a debt to be paid by children yet unborn, who had no influence in creating it. I want this generation to pay it, if pos- 666
sible. To be honest, we ought to pay it all within twelve years.

Now, gentlemen, I will tell the truth. It is better to let you know what is here in my breast than to conceal it. If you could show some means to me and my colleagues whereby we could pay, and the means of controlling this public opinion, it would be a discovery that we want, and I would go home trying to make it effectual; but I know that I cannot accomplish more than I can. We could not 667
carry it through the Legislature: that is, I am pledged upon the record to go no higher than 33⅓ per cent., but if it was possible they would vote 42c. over me. It is possible for them to vote that over me. *I* won't vote over it, but I won't fight it. Otherwise this is a continued battle, and you will see, in the end, who triumphs if the battle is forced upon us. Now, I speak as a politician and as a man of some experience, I have got into the Legislature simply by accident. I am a very old man, but I 668
never was in the Legislature before. It is a mortification to us to have to carry back a proposition that we cannot push through, and when you hear my colleagues talk, and hear me, I think you will be satisfied that whatever proposition you do make to us, we will carry it back with great respect, and submit it to the Legislature. There will be no

669 trouble, no hard feeling between us, and I hope you will consider my doctrines, although you may not approve of them. I want it to be understood that they are my sentiments, and that I think I can give a reason for them, although this is not a proper occasion. It is enough for me to announce the views, so as not to deceive you on this occasion. Gentlemen, I don't know that I want to say anything more. I think this is a practical matter, and if possible you ought to bring something to us that we
670 could reasonably hope to carry before our people.

Mr. COE: We thank you, sir, for your frankness at least.

Senator ARLEAGE: We hope you will not decide this matter hastily. We are prepared here to await your pleasure, and if you are not ready to-night, take your time about it. We came here to deliberate with you; we don't want to hurry you. We will stay here and wait for you, but I don't want to take that proposition home.

671 Senator MARTIN: You have heard the views of Colonel Savage, and you discover from his remarks that we are not exactly in accord in regard to this financial difficulty. He has insinuated to you his views in regard to it. His views in Tennessee are well known, and I can say that he is not alone, but that his party, I am sorry to say it, is growing in Tennessee very rapidly. There are at least three of us on this commission that are considered high tax men, that is, we are considered as men that are dis-
672 posed to do something for State credit, and I don't propose to say that the other two gentlemen are not disposed to do anything, but it is understood that they are not disposed to do quite as much as the balance of us. It seems, in Tennessee at least, that the question of ability has almost been left out of late, and it is now rarely ever spoken of. There is but little said about ability to pay, and the

ability to pay the whole debt is never entertained 673
by any one there at this time. That is the truth,
whether it is right or wrong, and I can say that if I
could see the means of paying the debt I should be
satisfied to try and do so. I know of but two ways
on earth of getting rid of a public or private debt,
and that is by paying it, or non-ability to pay it.
That is the standard to-day in Tennessee. I hear
men that differ with me upon constitutional grounds
and upon grounds of non-ability. I believe Ten-
nessee is willing to pay something; I believe at this 674
time she is willing to pay something; but if this
question goes into the canvass two years from now,
when the Legislature is elected, and if the tendency
of things continues as it has continued for the last
five or six months, as true as I stand here to-night,
the debt is gone forever. There are various argu-
ments that have been brought to bear. We have
heard this evening from gentlemen who have called
our attention to the condition of States heretofore.
They have referred to Maryland, Pennsylvania, 675
New York, and Indiana, but they have not referred
to a single Southern State that was swept by the
ravages of war. Not one. And we stand here to-
day with that in our behalf, which you have not.
We are not blaming you or anybody; we are not
discussing the right of war, but the fact is that
way, and we can show that one half of our taxable
property was swept away by the ravages of war. I
think the gentleman said this evening that before
the war he considered Tennessee bonds a safe in- 676
vestment, and I say again, that if we had no mis-
fortune you would have bet on Tennessee bonds,
for I believe Tennesseans have as much respect for
honor and good faith as any people in this or
any other land. But the question comes now to
those who wish to observe good faith. They look
around and ask the question: "If we can not pay

677 all, what can we pay?" And it seems the question that we can pay it all now is being left out entirely. The noxt thing is what can we do to save our credit? I have, as a State credit man, urged this compromise upon the ground that I believe it is the best for us, and I have to say to my friends that I believe we will go into repudiation sooner or later if we attempt to pay the whole of it. Continual funding will bankrupt any individual or any State; there can be no salvation; ultimately we will be over-
678 whelmed with the debt. Four years ago I voted against the funding bill on that ground; I thought if we could not pay the interest at that time, when would we? And I said, I would rather default upon my interest and raise the means to pay it, and if not this year let it wait and pay it next year, than to continue to fund and issue new paper, and thus lead to a precipice over which we must stumble sooner or later. I urge this compromise upon this ground.

679 I have given you figures, and gentlemen must not lose sight of this thing—that the People of Tennessee cannot bear as heavy a tax as a State that is more prosperous in commerce and manufacturing institutions. This tax has to be drawn from the people that are poorly able to pay a tax; it is from a people that are crippled in farming operations, with a labor system entirely destroyed. I was going to refer to an example. When the war broke out I suppose my father was as energetic and pros-
680 perous a farmer as there was in my section of the country. He had accumulated a considerable fortune by raising tobacco, and that farm stands to-day with 600 acres of cleared land, with four sons that are energetic and able-bodied men, who have all made money around there, but not a dollar on the old farm, and each of us has to look to other pursuits for a living. I had to

abandon it myself after the first year; I made as honest an effort as I could after I returned home to make a living on the farm, but the slaves were unreliable and labor was untrustworthy. I would hire one for the month or the year, and he would work a day and quit me. It is such things that cripple us. The men that are farming to-day in Tennessee, with few exceptions, now and then, are simply farmers that can carry their own row; but a large number of farmers that lived there before the war are barely eking out an income, and the little county papers are filled with land sales, and many have sold as many as three times over and bought in by the State without its ever receiving one single dollar's worth of revenue, but incurring large expense all the time, in the way of sales. Some of the largest property owners in the town of Memphis have had their property sold for three years, and the State never received a single dollar's worth from the sales. They say they can't pay it. 681 682 683

Now, gentlemen, in view of these things I would be exceedingly anxious to carry back a good report; and I believe if we don't carry back a satisfactory proposition from here—and the Legislature will adjourn about the 25th of this month—nothing will be done about this debt, and if it gets into the struggle two years from now I don't see my chance for it. Those are my sentiments, and I would regret that, gentlemen, as much as either of you, or any of the bondholders in the world; for I had rather pay a part of this debt to-day, and get rid of every single dollar of it if repudiation was the manner in which I had to do, because then if it is compromised by an agreement of our creditors we can refer back and look upon it as a compromise, and an honorable adjustment of this thing, and would thus get rid of the odium and reproach of bad faith. 684

685 Mr. COE: Let me ask of you, Mr. Martin, do you think a new Legislature would be more or less favorable if they should convene another one.

Senator MARTIN: It would be the same Legislature.

Senator ARLEAGE: Let me state once more, this point, that the sentiment I have spoken of in regard to cutting off this debt is a growing one in our State.

686 Mr. SAVAGE: In other words, you mean that I stood alone about the 1st of February, and now I have got the biggest crowd on my side.

Mr. TRAVIS: I want to call to your mind the reason why the people of Tennessee are educated up to the point they have arrived at now, and then the thing will be more easily explained to you, and you will be nearer able to account for the public sentiment in that State This Internal Improvement project, out of which two-thirds of this present debt
687 grew, commenced in 1852. It required a tremendous struggle and a thorough canvass of the State by our ablest men of that time to induce our people to enter into this project of Internal Improvement—loaning the credit of the State to railroad companies; and in order to satisfy the people with that view they succeeded completely in convincing them that they never were to pay these bonds that were loaned by the State to the railroad companies. They showed conclusively by argument that the
688 railroads themselves would pay the interest as it fell due, and a sinking fund sufficient to take up the principal when it had to be paid, and after having convinced them thoroughly of this fact, they acquiesced; and from session to session this Internal Improvement bill was added to, extending the sum, until after the war fifteen millions was added to it: the people all the time understanding it was

not to be paid by the State. Well, the war came 689
on and destroyed our railroad system. The roads were sold out and paid none of the indebtedness, scarcely. All the bulk of this debt comes to be paid by the people, and when you go before them and say: "You ought to pay the debt," they will tell you, "You showed us that we would never have it to pay." And there are two-thirds of this very debt we are having to pay now that grew out of this Internal Improvement project—fifteen millions raised upon this railroad project—and they 690
don't believe they ought to pay it. Why? Because they never promised to pay it. They never calculated upon the necessity of its being thrown upon them to pay it; and inasmuch as this maladministration of the State government was forced upon them without their consent, without their power to prevent it, and this indebtedness was increased in that way, they don't consider themselves in honor bound to pay that portion of the debt in the same sense that they do the 691
debt proper of the State. That is about the way they feel; and I deemed it necessary to say that much to you in order that you might understand the debt.

Sen. MARTIN: Just one word. To let you see the condition we were in in regard to this fifteen million debt after the war. I served as a Tennessee soldier for one year in the Confederate army; at the end of that time I took the oath of allegiance to the government under Abraham Lincoln's proclamation. 692
I came to Washington and there received a passport and went to Europe, and remained until the war closed. I went back to Tennessee, and they drove me from the polls for four years; when they fastened upon me and my property that debt—of which I would pay every dollar if I could—I had no more to do with fastening it upon the people of Tennes-

693 see than you, a citizen of New York, had. If I had been committing a crime, I had been pardoned by the highest power of the government; and on returning here they allowed my slaves to take possession of the ballot boxes, and drove me from the polls, together with over one hundred thousand white votes and tax payers at the same time.

Mr. Coe: I am a little surprised at some of you gentlemen having objection to long bonds. We supposed that was an advantage to you.

694 Mr. Shepherd: Almost all people would regard it in this way, but the framers of our Constitution guarded a creation of any debt in the future.

Mr. Coe: Tell us about that, please.

Mr. Shepherd: They prohibited absolutely and unqualifiedly the credit of the State to be loaned for any purpose whatever.

Mr. Coe: For their own purposes?

Mr. Shepherd: Yes; it cannot be now loaned
695 for any purpose.

Mr. Comegys: When was that enacted?

Mr. Shepherd: That was in 1870. I think this is literally the Constitution. The Constitution prohibits the creation of any bonded debt for any purpose of internal improvements of any kind.

Mr. Pratt: It would not prevent your issuing bonds to build an insane asylum.

Mr. Shepherd: I don't suppose it would, we
696 would provide for that simply by an appropriation bill.

The members of the Legislative Committee here retired, and the Committee on Arbitration, after long and careful review of the whole subject, came to an unanimous conclusion to recommend a compromise of the State debt of Tennessee, upon conditions contained in the following award, which was

announced to the delegates the next morning, and 697
copy delivered to them, as follows:

To the Honorable the General Assembly of the State of Tennessee:

GENTLEMEN—You have been advised of a public meeting of friends of the Southern States, held in the City of New York on the 20th day of January, ultimo, of which Hon. William Cullen Bryant was chairman, having for its object, "An effort to bring about, through the intervention of a committee of 698
disinterested arbiters, between the States and their creditors, a readjustment of the debts of the several Southern States, which are in default in the payment of the interest upon their obligations," and that the undersigned were invited to constitute such committee, and were requested "to confer with the authorities of each of the States in arrears, and with their creditors, and after weighing all the facts bearing upon the matter, to devise and suggest a feasible plan for the readjustment of the debts of those 699
States, upon a basis which should be fair and just to, and considerate of, all parties concerned."

In response to a communication from the chairman of that meeting to his Excellency Gov. Porter, and in accordance with his recommendation, the Legislature of Tennessee has been pleased to appoint a delegation to confer with us on the subject, consisting of the following gentlemen, viz.: The Honorables John H. Savage, G. W. Martin, Jesse Arleage, W. E. Travis and Lewis Shepherd. 700

After a prolonged discussion with your committee, when all the circumstances under which the debt was incurred, the peculiar condition of affairs in the State, together with its present ability and its future resources, were most fully and carefully considered, the undersigned have come to the deliberate conclusion *that after adding all the arrears*

701 *of interest and the interest to accrue up to July* 1, 1877, *the then aggregate amount of the State debt should be readjusted by the issue of new bonds at the rate of* 60 *per cent. of the total amount; i. e., for every sum of* $1,000 *then due, new bonds should be given in exchange and full settlement for* $600, *or for proportionate amounts.*

The new bond to bear interest at the rate of 6 *per cent. per annum from the* 1*st July*, 1877, *payable semi-annually in the City of New York, the first*
702 *payment of interest to be made on the* 1*st January*, 1878, *and the principal to be made payable also in New York, in thirty years from date. The interest coupons to be received by the State for all taxes due it.*

This compromise the undersigned consider, under all the circumstances and necessities of the case, to be just and fair, both to debtor and to creditor.

To facilitate and promote the proposed exchange, which it is assumed the creditors will generally
703 accept, this committee recommend that a new uniform issue of coupon bonds of the required amount, in denominations of $1,000, $500 and $100, for convenient exchange, be prepared, ready for delivery from time to time as wanted in the City of New York, and that they be there held subject, when issued, to the countersign of an agent appointed under their supervision, if so desired, with the approval of the Governor of the State; the new bonds to be registered in the name of the owner if pre-
704 ferred, and the old bonds as exchanged to be canceled and immediately returned to the treasurer of the State.

In the conclusion to which this committe have, with much deliberation, arrived, they have not lost sight of the fact that a sovereign State, although beyond the reach of legal coercion in the fulfilment of its obligations, is for that very reason under

stronger bonds to maintain its credit inviolate. Nor 705
have they been unmindful of the honorable char
acter and unblemished credit which the great State
of Tennessee has always enjoyed in the markets of
the world, of her reputation for the possession of
large resources, nor of the humiliation she must
consequently endure by any compromise whatever
of her legal obligations. All these considerations
have been duly weighed, and they have induced
this committee to carefully inquire whether it was
expedient for them to recommend, instead of so 706
large a reduction of the principal of the debt, a con-
cession for a few years, in the rate of interest as
proposed in a plan submitted to the governor by
holders of a large amount of bonds, in the belief
which is generally entertained among the creditors,
that a gradual recovery of wealth would accrue to
the State, and enable her at an early day to resume
payment in full. This mode of adjustment would
be obviously more gratifying to State pride, and
would also afford greater present relief, and it would 707
certainly be more acceptable to the majority of bond-
holders.

But after attentively considering the statements
of your delegation, respecting the sad result of the
war, the social derangement and general impoverish-
ment it has entailed, and the wide-spread disorgan-
ization existing in all the industries of the people
throughout the State, we have been constrained to
the decision that a summary reduction of the debt,
even to the large extent indicated, is the best course 708
for all parties concerned, and that, unless the legis-
lature shall now see its way clear for a settlement
more favorable to the bondholders, it is both its
duty and its policy to adopt the award which this
committee most respectfully and conscientiously
tender to them and to their creditors, as the result
of their best judgment.

709 This committee regard it as most important and just to all the creditors of the State that the bonds issued under the proposed adjustment shall be uniform in terms and conditions of payment and in their general appearance; and they also express the conviction that the State will be able at an early day to provide a fund, however small, in excess of the interest, to be used for the gradual extinguishment of the debt. This, with the constitutional prohibition which they are informed is now existing, that
710 "no debt can be incurred by the State for the creation or in aid of any public improvement," will give augmenting value to the new bonds, and so far tend to mitigate the loss which the creditors incur.

The consideration that the decision of this momentous question by a State so distingnished in character and position as Tennessee will exert unbounded influence upon the other States, gives immeasurable responsibility both to this award and to its adoption. Yet the committee confidently present
711 it with the belief that while it is best for her creditors, it is also best for the State, and that it will remove the greatest obstacle that now stands in the way of the prosperity of the whole nation. And they have the honor to be, gentlemen, your obedient servants,

GEORGE S. COE,
J. D. VERMILYE,
B. B. SHERMAN,
B. B. COMEGYS,
ENOCH PRATT. } *Committee.*

712

713

RESPONDENTS' EXHIBIT NO. 8.
W. H. D. L.—N. P.

THE

DEBTS OF THE SOUTHERN STATES.

REPORT

714

OF A

MEETING HELD AT THE CLEARING HOUSE

IN NEW YORK CITY,

On Thursday, January 25th, 1877

NEW YORK, Jan. 20, 1877. 715

Dear Sir:

A movement has recently been inaugurated in this city, having for its object an effort to bring about, through the intervention of a committee of disinterested arbiters between the States and their creditors, a readjustment of the debts of the several Southern States which are in default.

The great importance of this movement cannot be questioned. 716

To the financial embarrassment of the South is largely due the present depression throughout the country in all kinds of business. As a people we can hope for no positive or permanent prosperity until every State in the Union is in a condition of solvency and financial health.

The restoration of the credit of the South is

therefore a matter of vital necessity to the well-being of the whole country.

The debts oppressing several of the States of the South are of such magnitude that their payment is a matter of actual impossibility.

The States can take no steps toward reducing the amount of their indebtedness, except at the risk of the stigma which attaches to acts of repudiation.

Under these circumstances, it is proposed that a committee of five disinterested gentlemen be appointed to confer with the authorities of each of the States in arrears, and with them, after weighing all the facts bearing upon the matter, to devise and suggest a feasible plan for the readjustment of the debts of these States upon a basis which shall be fair and just to, and considerate of, all parties concerned.

By the adoption of this method, which must commend itself to the best judgment of all, the people of the discredited States will be assured of our sympathy in their unfortunate condition, and will be provided with a way by which they can relieve themselves, without detriment to their pride or to their honor, of the burdens now oppressing them.

It is eminently proper that in this movement, so palpably for the good of the whole country, New York City should take the lead.

It is proposed to hold a meeting of parties interested in the subject on Thursday, 25th inst., at 12 o'clock, at the Clearing House, corner of Pine and Nassau streets (entrance No. 14 Pine street), that some emphatic public approval and indorsement may be had of the movement, the success of which will tend more than anything else to obliterate the last vestiges of the war, and to restore harmony among the States, and prosperity to the whole country.

You are most earnestly requested to attend

the meeting, and by your presence to aid in this 721
good work.

Jno. T. Agnew,	James G. King's Sons,
Babcock Bros. & Co.,	A. C. Kingsland & Sons,
August Belmont & Co.,	Kuhn, Loeb & Co.,
Brown Bros. & Co.,	A. Lowe & Bros.,
Wm. C. Bryant,	Chas J. Martin,
Fred. Butterfield & Co.,	Sam. M'Lean & Co.,
John J. Cisco & Son,	Morton, Bliss & Co.,
H. B. Claflin & Co..	E. D. Morgan & Co.,
Thomas Denny & Co.,	George Opdyke & Co.,
David Dows & Co.,	Phelps, Dodge & Co., 722
Drexel, Morgan & Co.,	Henry F. Spaulding,
Wm. M. Evarts,	H. G. Stebbins & Son.,
Wm. H. Hays,	J. & W. Seligman & Co.,
Wilson G. Hunt,	John A. Stewart,
M. K. Jesup, Paton&Co.,	Moses Taylor,
E. S. Jaffray & Co.,	L. von Hoffman & Co.,
Robert Lenox Kennedy,	F. S. Winston.

In accordance with the request contained in the foregoing letter, a number of the leading citizens of New York assembled at the Clearing House, on 723
Thursday, January 25, 1877.

The meeting was called to order at 12 o'clock.

The Hon. William Cullen Bryant was unanimously elected chairman, and Mr. Thomas Denny (Thomas Denny & Co.) was appointed secretary.

Upon taking the chair Mr. Bryant said:

"We are assembled, my friends, for a purpose which may, without offense to the proprieties of 724
language, be called philanthropic. Certain of the States which compose this Union are in a condition of deplorable insolvency, from which no exertions of their own can extricate them—that is to say, they are so deep in debt that only the assistance of some friendly hand can enable to emerge. You all know what is the effect of insolvency when it becomes

725 hopeless. It petrifies the moral nature; it causes the obligations of debt to be disregarded, or in the language of the day, ignored. The debtor loses his self-respect, wraps himself in a sullen indifference to consequences, and looks defiance, if he does not speak it, at the creditor. But give him the hope of satisfying his creditor and show him a practicable way of doing it, and you make another man of him. He adopts it, if he be not lost to shame; he adopts it with alacrity, comes to an agreement with
726 his creditor, and rejoices at having got rid of a burden which he could not bear without a sense of degradation. This meeting is called for the purpose of initiating a method of helping those States which are unfortunately past helping themselves.

"I remember a case in which the effect of causes like these was strikingly illustrated. It was related to me nearly forty years ago, soon after the great era of insane speculation, succeeded by commercial panic and ruin. I am sorry that I cannot remember
727 the name of the individual concerned. Brooklyn at that time was little more than a village surrounded by farms, and one of these farms was his, but he was deeply in debt, so deeply that he had lost courage and hope, and began to lead an idle life, smoked and drank in taverns and went fishing, neglecting his farm altogether. Then came the period of speculation; those who were touched with the insanity of the time came about him and wanted to buy his farm. They offered him large prices,
728 he hesitated. They renewed their offers; he held to his land more firmly. And now he became so contented with the idea of being rich, and so sure that by selling his farm he could pay off his debts at any time, that he changed his course of life altogether. He forsook the taverns, laid up his fishing rod, went to work on his farm, lived frugally, sold his crops at the large prices of that time, and

when at length the panic came and the speculators were ruined, there was our Brooklyn farmer, changed into an industrious man, out of debt and with an uncumbered farm. 729

"What the fluctuations of the money market did for this Brooklyn farmer by raising him from despair, inspiring him with hope, and showing him a way out of his difficulties, it is the object of this meeting to do, or at least make an attempt to do, for the States of the Union whose embarrassments would otherwise sink them to a depth from which they could never emerge. To this end it is proposed to call in the aid of some of our wisest and most experienced men of business, whose names will be given for your approval." 730

Upon the conclusion of the remarks by the chairman, Mr. FRED. TAYLOR (Fred. Butterfield & Co., said:

Mr. Chairman and Gentlemen: Before the resolutions which have been prepared shall be presented, it is perhaps proper, since I have been so largely instrumental in bringing you together, that I should state briefly, but more fully than has been set forth in the letter which you have received, the objects sought to be attained by this meeting. 731

A meeting at which I had the honor to preside, of the creditors of the State of North Carolina, was held in this room a few weeks since, at which, after some discussion, the following resolution was passed: 732

Resolved, That George S. Coe, B. B. Sherman, J. D. Vermilye, B. B. Comegys and Enoch Pratt be appointed a committee of arbiters between the State of North Carolina and the holders of its bonds, and that they be authorized for and in behalf of the bondholders to take such action as they deem wise to secure (if possible) a readjustment of the debt of the State of North Carolina upon a basis that shall

be equally considerate of justice to the State and the bondholders.

Since that time the idea of the appointment of a committee of disinterested arbiters, to consider the condition of the State of North Carolina, and to aid its authorities in determining as to the best course to be pursued with reference to its debt, has been by the press and by individuals very generally approved; and it is at the suggestion of some of our wisest and best citizens that this meeting has been convened to secure an emphatic public indorsement of the idea, and further, to request the same committee to act in the capacity of disinterested arbiters as to the debts of all the Southern States in arrears, and to suggest some equitable plan for their readjustment.

It is unnecessary for me to tell you of the financial condition of many of the Southern States. We all know it here at home—unhappily the world knows it, to our shame. Virginia, mother of States and of Presidents, is to-day, in her old age, steeped to the lips in poverty, and burdened by a debt which she can never hope to pay, but which, thank God, she is too honest to try to repudiate. What is true of Virginia, is equally true of several of her sister States, notably, Louisiana and both the Carolinas.

The question naturally arises, what can these States do to find relief? Their creditors are scattered throughout the country and the world. Negotiation with each one of them is impossible, and any body of the creditors must necessarily represent but a small proportion of the whole number. Besides any attempt at negotiation with the creditors would undoubtedly develop a vast contrariety of opinion among them; while some might be inclined to meet the States in a generous spirit of compromise, others, feeling that soreness and testiness

which is but natural as the result of a losing invest- 737
ment, might be inclined to regard any course on the part of the States other than payment of the debts, dollar for dollar, as unjust and wrong.

The authorities of the defaulted States are aware of this, and doubtless their inaction in the matter has been largely due to the difficulties which they know must confront any attempt at compromise.

I have said the question suggests itself, what can be done? The answer clearly is that something must be done, because the Southern States cannot 738
always remain in their present condition. So long as any State in the Union is in default upon its bonds, and is dishonored in its credit, that State connot stand in its right relation to its sister States, nor can it achieve any positive material progress. Its dishonored credit is like a millstone about its neck, constantly dragging it down. Nay more, so long as any State in the Union is in default, and is dishonored in its credit, it matters not whether it be a Northern State or Southern, whether it it be Min- 739
nesota or Mississippi, it is not only our shame at home, but it is our disgrace abroad, and we cannot stand, as we should stand, fairly and squarely before the world as a nation.

In this emergency it is proposed that five honorable, upright business men, of rare experience in finance, accustomed to the execution of delicate trusts, and without one single dollar of pecuniary interest in the matter, be requested to approach the authorities of each of the defaulted States to solicit 740
from them a complete statement of the condition of each State, its liabilities and its assets, its actual present and probable future ability, and having carefully investigated and considered all the circumstances bearing upon the case, to devise and suggest a plan for the readjustment of the debts of each State upon a basis that shall be equally just

741 to and considerate of the interests of both debtor and creditor.

I am convinced, from evidence already adduced, that this plan will be satisfactory to the bondholders as a body, and I am glad to be able to state that the authorities of several of the Southern States have already signified their approval of it, and their willingness to co-operate with this committee.

By a recommendation of this plan we manifest what must be grateful to our Southern brothers—
742 the fact that the city of New York sympathises with them in their unfortunate condition. By the adoption of this plan a way will be provided by which each of the discredited States may pass into a condition of solvency, with no stain of repudiation upon its garments, because the letter which has been signed by so many of our leading citizens, and this meeting to-day, will justify any State before the country and before the world, in accepting and carrying out any plan recommended by the
743 committee.

The question has been asked why, instead of this general meeting of business men, a call has not been published for a meeting of all the holders of defaulted Southern bonds, as the parties most interested.

I answer, for two reasons: First, because no hall down town would be likely to contain those who would assemble in response to such a call, and because such a call might indicate, inferentially, that none but the holders of the defaulted bonds are in-
744 terested in the matter.

Surely this is not the case. This is a matter of importance to us all, bondholders or not bondholders. Every individual in the community who follows an honest calling for a living, no matter what his business may be, if he be an American citizen and true to his citizenship, must be interested in the settlement of this matter, in the rehabilitation of all

the defaulted States, and in the putting of our country right before the world. 745

I trust, Mr. Chairman, that the sense of this meeting will endorse the movement which I have indicated.

Hon. H. G. STEBBINS (H. G. Stebbins & Son), said:

Mr. Chairman: It now becomes my pleasant duty to read the resolutions, which have been prepared for the consideration of the meeting. It is needless for me to say how heartily I endorse them, or how satisfied I am that their adoption by the gentlemen assembled here to-day, will be productive of good not only to the South, but to our city and to the whole country. 746

RESOLUTIONS.

Whereas, Several of the Southern States of this Union have incurred heavy public debts, which have become a burden greater than they can now bear; and 747

Whereas, Such financial embarrassments naturally tend to repel immigration and enterprise from those States, and operate continually to retard their growth in population and wealth; and so long as those States remain in default, these accumulating volumes of unliquidated debt will prove an insuperable obstacle to all true progress and prosperity; therefore, be it 748

Resolved, That as citizens of New York, we deplore the existing state of things in the defaulting States of the South, and we desire to give expression of our sympathy with the people of those States in their unhappy condition. We recognize the insurmountable obstacles in the way of an hon-

749 orable discharge by them in full of all their legal obligations, and we perceive that some method of compromise and readjustment is absolutely necessary. Anxious to promote such a settlement upon equitable terms, we recommend the intervention of a committee of disinterested arbiters between the States and their bondholders, as offering a method fair and honorable alike to debtor and to creditor.

Resolved, That in the opinion of this meeting, the five bank officers named, to wit: Geo. S. Coe, J. D.
750 Vermilye, B. B. Sherman, B. B. Comegys and Enoch Pratt, possess the fullest confidence and respect of the country, and are, therefore, eminently fitted to discharge such a duty, not only from their high personal character and qualifications, but also from their long experience in important business affairs.

Resolved, That we most respectfully commend this movement to the earnest consideration of the
751 authorities of every defaulting State, and we cordially invite them to signify to this committee their desire to confer upon this important subject.

The Chairman—Before taking the vote upon the resolutions, the Chair would be glad to hear any remarks bearing upon them.

Hon. GEORGE OPDYKE (Geo. Opdyke & Co.) said: I rise to express my cordial approval of the resolutions under consideration, and my entire
752 sympathy with the sentiments expressed by our distinguished Chairman and by the gentleman who preceded me. It appears to me that the movement which this meeting is intended to stimulate and advance, is alike judicious and well-timed. We all understand the exceedingly depressed financial and material condition of most of the Southern States. We all know, also, that this depression is directly

traceable to the late war, which exhausted their 753
material wealth, and at once and forever blotted out the value of their immense investments in slave property, thus producing a degree of impoverishment scarcely paralleled in modern times. In truth almost the entire wealth left them at the close of the war was their lands, and these for a time remained almost a barren waste for want of productive capital and labor to cultivate them ; for it was found that the transition from a system of slave labor to free labor was attended with so many difficulties 754
and obstructions that it took years to overcome them. In the face of all these depressing conditions the people of the South were not disheartened. At the close of the war they returned to industrial pursuits, and have since labored earnestly and with enforced economy, to restore their wonted prosperity. Upwards of ten years of such effort has greatly improved their material condition, but it will take other years of like effort to fully restore their prosperity. Meantime, the debts of 755
some of the defaulting States have been nearly doubled by the accumulation of interest. Their payment in full has become an impossibility.

In view of these well known facts, a compromise between these defaulting States and their creditors has become an absolute necessity ; and I deem it eminently proper that this movement originates with the creditor class and other leading financiers of the North. They have come forward with liberal views and enlightened self-interest to confer with 756
these defaulting States, to ascertain their financial condition, to agree upon settlements that shall be fair and equitable, and thus secure all that they are able to pay, re-establish their credit, and all without wounding their sensibilities. This is a consummation greatly to be desired. It cannot fail to secure for the South a new era of prosperity which

757 will be largely shared by all interests at the North, re establish fraternal feelings between the two sections, and strengthen the credit of our country abroad.

Mr. JOHN STEWART (President of the United States Trust Company) said:

Mr. Chairman—I don't know that I can add anything to the lucid statements that have been made. I do not appear here as the creditor of any South-
758 ern State, nor is the institution which I represent interested in the bonds of Southern States. I came here as a citizen having at heart that interest which every true citizen ought to have. We well know that up to the outbreak of the rebellion, the City of New York owed its growth and prosperity in no small degree to its connections, its business relations with the South, and if we are ever to relieve ourselves of the burden of taxation under which we are groaning here, we must endeavor to re establish
759 those relations. I believe that it will be beneficial to the city of New York to have this matter of the debts of the Southern States adjusted. I believe that we ourselves have a very great interest in this matter, and we know perfectly well that unless some arrangement is made between those States and their creditors a state of prosperity in this country cannot be brought about for many years. I therefore most cordially approve of this step, believing that great advantages will result to the South from it
760 and to ourselves. As a citizen of New York, I strongly commend it.

Mr. F. S. WINSTON (President of the Mutual Life Insurance Company) said:

"I take great pleasure, Mr. Chairman, in expressing my entire approval of all that has been said by yourself, and by the gentlemen who have already addressed you, as to the philanthropy and

patriotism of this movement. It is the legitimate 761
outcrop of our National Centennial celebration, and if it succeeds, as we trust it may, few things connected with that grand and memorable event, will equal it in importance or benign results.

The resolutions which have been offered for our consideration this afternoon, have my hearty assent. I go further than my friend who has just taken his seat, in regard to the pecuniary advantages to the North, of a proper settlement of these bonded debts to those who now hold none of the defaulted obli- 762
gations. Place the Southern States in such a sound financial position, as will enable them to on and issue obligations which they can meet as they mature, and you create a State security which will be largely sought for as investment by our moneyed corporations and by individuals in this city, and throughout the North.

The debts of our Northern States are comparatively small, and are very rapidly disappearing, being absorbed by Sinking Funds created for their 763
redemption.

Investors are constantly looking for State securities whose obligations will be properly secured and promptly met, and I therefore deem that such an arrangement as is contemplated here will not only be greatly to the advantage of the Southern States themselves, but also to the interest of individuals and institutions at the North who are seeking securities for investment.

No better selection in my opinion, could be made, 764
of gentlemen to whom these affairs are proposed to be committed. They are known to us all and to the community at large, as men of high character, intelligence and honor, and who, from temperament, as well as from past occupation, are peculiarly fitted for these delicate and complicated labors. I trust, sir, that the resolutions which have been

765 offered will be adopted, and that the scheme will be successful.

In response to a call from the Chair, the REVEREND DR. SAMUEL OSGOOD said:

I had no expectation of speaking on this subject, not being a business man but a quiet scholar, and somewhat retired theologian, yet being asked to come here, I came because I felt it my duty as a citizen to be present, and because this call appeals
766 to us on grounds of ethics and patriotism. It seems to me most interesting that the meeting was called on such generous grounds, and when I find that it is proposed to ask the advice of five gentlemen who have no interest in the matter, further than to act justly, the plan seems to me to be most dignified.

Now is it not true that there is a financial patriotism as well as military patriotism and a political patriotism? The vulgar idea is that when a business man does anything, he does it only because he
767 wants to make money, and moreover two men when they have managed to cheat each other out of some money, may be thought to have made a good bargain; but the true idea of business is quite the reverse; it is mutual advantage, and in the highest sphere of business there is a certain disinterestedness, a recognition of supreme justice and the general welfare. The business man, I conceive, in the usual order of his business expects to make a fair profit, yet there are times when he looks for no
768 direct financial return, nothing but the substantial safety and prosperity of his country, and it is in that position we stand here; we stand on the ground of justice, high principle, true patriotism, in this effort to bring about good understanding between our Northern and Southern people. What we need in our business men is practical sagacity; financial judgment; then we want courage, the courage of

financial generalship that sees the distant good and 769
leads on bravely to success; then we want integrity, that element in a business man which gives him weight, so that when the public see the names of the men who lead, they have confidence in the movement, and say, there is sagacity, there is courage, there is integrity at the head, and we feel all right under such guidance. I am sure that I am speaking to men who know what I mean, and who will not make light of words so serious, upon a matter of financial interest. 770

I remember reading in Coleridge, that profound philosopher, a remark something like this: "The Rome of the future is business." That is a very original remark. What does it mean? That the real empire of the future is to be the true organization of industry and wealth, and it is to depend upon business energy and knowledge; and that as the Rome of the past depended upon law, generalship and government, so the Rome of the future, the great business empire, is to depend upon those 771
same qualities of order, generalship and discipline. I take this movement to mean "our business men to the front for the country and the flag;" the nation needs them there, and I wish the movement God speed!

Mr. EDWARD ATKINSON, of Boston, said:

It is only within an hour that I knew of this meeting. I do not know that many of the people of New England are interested in Southern bonds, but no 772
section of the country has greater interest in the prosperity of the South than New England. You can find in the South itself an example of progress, of prosperity, of energy and of enterprise in one State, to which you might well invite the attention of other States. The State to which I refer is the State of Texas, which within the decade next ensu-

773 ing may contest with New York the title of Empire State, increasing from 800,000 population in 1870 to 2,000,000 now, and at the rate of between 300,000 and 400,000 annually. There is no State in this Union showing such productive power and such force. Now, if we would get at the real worth of a country, we must remove the obstructions from production; and the worst obstruction that can stand in the way of productive force is this burden of debt, however it may have been incurred;
774 and the real good of the community, the real good of the bondholder himself, will be in starting again the forces of those States, so that whatever they can pay they shall pay.

To one who studies the Southern section of this country, there is nothing more startling than to observe underlying all this political turmoil, all this disturbance and all this burden of debt, the industrial reconstruction going on in such a manner that although you may say the South was never so
775 poor in accumulation as it is to-day, yet as a whole, never so rich in production. When, before, have the Southern States ever yet made their great money crop, their cotton crop, their surplus product? When, before, have they ever subsisted themselves to the extent that they have in the last two or three years? And it is true that even having subsisted themselves to a greater extent than they ever did before in this last year and the year before, they have at the same time increased their great
776 cotton crop in the last seven years 1,500,000 bales beyond the seven years preceding the war. Every chance exists there for activity and enterprise and force and vigor, such as could never have existed under the old days of slavery, and it needs only this measure—I won't say that; it needs something more (it needs for us to follow the example of Texas) two things; 1st, to remove from the Southern

States the incumbrance of debt, and, 2d, to remove 777
from the nation the contamination of bad money. With these two things combined, one can see such an era of prosperity in the South that it will give the North a hard strain to keep up with it. Mr. Chairman, I approve the resolutions, and am confident that their adoption will do the country great benefit.

Mr. L. P. MORTON (Morton, Bliss & Co.) said:

Mr. Chairman: There has been manifest such 778
entire unanimity of feeling in favor of the objects sought to be accomplished by the meeting that there seems to be no occasion for me to add anything to what has been already said. I wish, however, to express my belief that the restoration of the credit of every State in the Union is a matter of vast importance, not only to the States themselves, but to the whole country and to every citizen in it; and that, in the well-chosen language of the call for this meeting, we cannot hope for general and 779
permanent prosperity throughout the country until every State in the Union is in condition of solvency and financial health.

I believe, too, that the task is not so difficult as it appears to be at first sight, and that it can be accomplished in the manner which has been suggested, and not only satisfy the bondholders, but at the same time avoid, as far as possible, wounding the pride or tarnishing the honor of the citizens of the discredited States. 780

The gentlemen composing the committee are men of high standing and character, and deserve the entire confidence of both debtor and creditor.

While I have only an indirect interest in the success of the movement inaugurated, I scarcely need say, Mr. Chairman, that it will give me pleasure, as it will my firm, to do anything in our power to aid in bringing about that success.

781 Mr. CYRUS W. FIELD called for a vote upon the resolutions.

The Chair put the vote, and the resolutions were carried without dissent.

The Chair appointed Mr. L. P. MORTON (Morton, Bliss & Co.) and Mr. JOSEPH SELIGMAN (J. & W. Seligman & Co.) a committee to wait upon the gentlemen named in the resolutions, and to invite their
782 presence before the meeting. In accordance with the invitation, Mr. GEO. S. COE (President of the American Exchange Bank) and Mr. J. D. VERMILYE (President of the Merchants' Bank) were escorted into the room and were invited to seats at the right hand of the Chairman.

The action of the meeting having been communicated to Mr. COE and Mr. VERMILYE, Mr. COE said:

783 *Mr. Chairman:* Before replying definitely to your inquiry whether the gentlemen who have been honored by being named for a trust so delicate and responsible as that proposed, would enter upon the duty, it is proper that I should state why they were thus nominated, and how this movement originated.

A gentleman actively identified with the Centennial Exposition in Philadelphia, conceived the idea that if that great institution, which was pro-
784 jected in the spirit of national fraternity, and which in all its progress and in its results had largely succeeded in dispelling sectional antipathies among the people of this country, could be followed by some practical plan for the settlement of the State debts which were lying dishonored in the hands of people of this and other nations, it would be an event that would prove a happy sequence to the

great Exposition, and follow it as a crowning 785
glory.

That, important and valuable in its national results as that Exposition undoubtedly was, it was but the flower of which this would be the substantial fruit.

Accordingly, he called together several bank officers and suggested to them the idea of nominating a committee or board, which should be composed of men accustomed to administer large public trusts, men who were not interested themselves in bonds, 786
nor dealers in them, to whom should be referred the whole question between these debtor States and their bondholders, and who taking all the facts of their issue, the situation of the States, and every circumstance relating to them, into consideration, would, after patient hearing, decide what re-adjustment was equitable and fair and endeavor to secure a result satisfactory both to debtor and creditor.

Upon the cordial approval of that suggestion, which was recognized as entitled to the hearty sup- 787
port of every good citizen, the following gentlemen were named as suitable for such a Board.

GEO. S. COE, President American Exchange Nat. Bank, New York.

J. D. VERMILYE, President Merchants' Nat. Bank, New York.

B. B. SHERMAN, President Mechanics' Nat. Bank, New York.

B. B. COMEGYS, Vice President Philadelphia Nat. Bank, Philadelphia. 788

ENOCH PRATT, President Nat. Farmers' and Planters' Bank, Baltimore.

Upon being asked whether they would accept this trust, they assented, upon the condition that the Executive authorities of the States named, and also an adequate number of the respective bondholders, would concur in recommending them and the plan,

789 and would give it such earnest support as would afford reasonable assurance of success.

Upon this conditional acceptance of the trust, Col. Peyton waited upon the Governor of Virginia, who entertained the proposal with marked cordiality, and at once referred it to the Legislature, then in session, for consideration. It was immediately referred to the Finance Committee of the House of Delegates, whose Chairman addressed me the following letter:

790

RICHMOND, VA., January 20, 1877.

GEORGE S. COE, Esq.

Dear Sir: Some weeks ago, Col. J. E Peyton, of New Jersey, appeared before the Finance Committee of the House of Delegates of Virginia, of which I am Chairman, and informed the Committee that a number of bankers and other gentlemen of influence in commercial circles, sympathizing with the South-
791 ern States in their present financial embarrassment, had kindly consented to act as mediators between those States and their creditors, with a view to effect some arrangement which would be satisfactory to all parties.

Col. Peyton further suggested, that, in order to give the board of mediation full information as to the financial condition of Virginia before the war, when the State was undivided, and also at the present time, it would be well to compile from authentic
792 sources, tabular statements, showing the entire resources of the State in 1860, with the amount of the debt, for what purposes contracted, and what means she then had to meet it, and similar tables showing the present taxable values, the losses of real and personal property, stocks, &c., which she had suffered, the heavy burdens which she had to bear in educating and governing the liberated ne-

groes, and other causes which had diminished her 793
ability to meet her obligations.

A sub-committee was appointed to compile the facts from the records of the various government offices, and their report has been printed by order of the House of Delegates, and under the instructions of that body, I have ordered one hundred copies of that report to be sent to you for the use of yourself and those associated with you in your kind endeavor to render us service.

The report, you will observe, is limited to a sim- 794
ple statement of facts, without any attempt by argument to add to their force.

In conclusion, I beg leave, on behalf of the committee, of which I am chairman, to say that we gratefully appreciate the kind feeling which has induced you and those associated with you, to tender your mediatorial offices in this delicate and important matter, and let the result be what it may, we can never forget your disinterested effort to promote the interests of our impoverished and lan- 795
guishing State.

Very truly yours, &c.,

(Signed), ALEX. H. H. STUART,
Chairman Finance Committee, House of Delegates.

P. S.—Not having the address of the gentlemen associated with you I have not been able to address letters to them, and I must therefore beg the favor of you to communicate the contents of this letter to each of them, and ask them, respectively, to regard 796
it as having been addressed to each one of them.

To whom I replied as follows:

797 JANUARY 23, 1877.

HON. A. H. H. STUART:

CHAIRMAN FINANCE COMMITTEE,
House of Delegates, Richmond, Va.

Dear Sir: I have the honor to acknowledge the receipt of your letter, 20th inst., informing me of the action of your committee upon the suggestion of Col. Peyton, with reference to the State debt, and I have received the package containing sundry printed reports of your sub-committee, as advised.

798 In the present immature condition of the plan recommended for a readjustment of the public debts of certain States by reference of the subject to a committee of arbitrators, I can now properly do no more than to respectfully acknowledge these important documents, and retain them for reference in due time.

The gentlemen whose names have been suggested for such eminent and responsible services have only gone so far as to express the sentiment which they,

799 in common with this whole community, entertain as to the vital importance, not only as to the progress and prosperity of those States specially involved, but also to the reputation of the whole nation, that all those great public debts, now scattered over the world, and in default, should be called in and be equitably readjusted upon some solid and permanent foundation. In answer to a respectful request, they have simply expressed their willingness to compose such committee if de-

800 sired by both the debtor and creditor interest, under conditions that will give their award reasonable assurance of success.

The friendly feeling which pervades this city upon the subject is tersely expressed in a call for a public meeting to be held on the 25th inst., which is signed by many of our most honored citizens, whose names you will recognize as entitled to the

highest consideration. A printed copy of this call 801
I inclose herein.

Should this meeting secure a friendly response, I am informed that it will be followed by a request for bondholders of the respective States to come together, and should they also choose, with decided unanimity, to select the gentlemen named to act in the capacity of arbiters, they will probably convene and organize for the work.

I can add nothing more than the expression of my warmest desire that whether the gentlemen 802
named shall be selected for so great and honorable a service or not, that the patriotic object aimed at will, by some means, be satisfactorily secured.

I have the honor to be, Sir, your obedient servant.

(Signed) GEORGE S. COE,
On behalf of the proposed Committee.

This, Mr. Chairman and gentlemen, presents to your minds the whole situation as it now stands. 803

In respect to the general subject involved, I can only say that this committee fully participate in the sentiments which have been expressed here to day. From one hundred and fifty to two hundred millions of bonds of the States of this Union are now scattered about the country and the world, they hang like a dark cloud over the States that owe them—a cloud daily augmenting and rolling up into volumes of indefinite amount. They repel all emigration to those States, and repress all enterprize. 804
No intelligent man will select there a home, where an untold public liability awaits him for taxation, and no one will voluntarily identify himself with the odium of public debt dishonored. These bonds lie in the pockets of the people who have bought them, a continual reminder of disappointed expectations and unfulfilled promises. They are active causes of

805 alienation and discord. In the possession of people of other countries, they are known only by the general name of American bonds. No citizen of any part of this country can travel abroad without being stung to the quick with the reproaches of those who hold them, and it is in vain to reply that they are the debts of other States than his. It is enough that they belong to the common brotherhood, from which no true patriot desires to be separated. The reputation of any part of the nation is the reputation of
806 the whole great family.

Whether, then, they are regarded as affecting the special States involved, where they retard all progress, and therefore deprive both them and all of us of the commercial results and blessings of enterprise and progress, or whether they are considered as affecting the nation, whose welfare and prosperity are best promoted by the well being and active and friendly Intercourse of every part, it is a subject which may well engage the earnest effort of every
807 good citizen.

The gentlemen named as this committee have not sought this duty. It has sought them. If properly requested, they will accept it and will endeaver to discharge this great trust with conscientious fidelity.

At the conclusions of Mr. COE'S remarks Mr. VERMILYE addressed the meeting, expressing substantially the same sentiments.

On motion of H. F. SPAULDING (President of the
808 Central Trust Co.) the meeting was adjourned.

Mr. SHERMAN was unavoidably prevented from being present.

United States Circuit Court

FOR THE WESTERN DISTRICT OF TENNESSEE.

In Equity.

CALVIN AMORY STEVENS, on behalf of the holders of Tennessee State Bonds, issued to the MOBILE & OHIO R. R. Co.

vs.

THE MOBILE & OHIO R. R. Co.

SAME, on behalf of holders of Tennessee State Bonds, issued to the MISSISSIPPI & TENNESSEE R. R. Co.

vs.

THE MISSISSIPPI & TENNESSEE R. R. Co.

SAME, on behalf of holders of Tennessee State Bonds, issued to the MISSISSIPPI CENTRAL & TENNESSEE R. R. Co.

vs.

THE CHICAGO, ST. LOUIS & NEW ORLEANS R. R. Co., *et al.*

The deposition of Byrd Douglas taken by consent in the above causes and to be read as evidence for the complainant.

The said witness being of lawful age and duly sworn, deposed as follows:

Question 1. Were you acquainted with the late Francis B. Fogg, of Nashville; and if so, how long had you known him before his death?

Answer. I was acquainted with the late Francis B. Fogg, of Nashville. I became acquainted with him about 1845; but we knew each other previous to that date, being a correspondent of Foster & Fogg as early as about 1838.

Question 2. Did you ever hear Mr. Fogg express any opinion in reference to the lien of Tennessee State bonds upon the railroads of the State? If so, please state what that opinion was, when the conversation occurred and all you may remember about it.

Ans. During the rule of Brownlow in Tennessee, there were frequent discussions in regard to the additional issue of bonds to railroads. I sought the company of Mr. Francis B. Fogg, and requested an expression of his opinion on the subject of the intended working of the law of 1852. As I now remember, he said,—That being what is called a statutory mortgage, is intended as authority for the issuance of thousand dollar coupon bonds to railroad companies, who would avail of the terms, which should pass from hand to hand, that is, circulate with facility, while the mortgage or lien assented to by the railroad company, will inhere and inure to the party furnishing the iron or money, in exchange for the bonds. He said he owned bonds issued to a railroad, and considered he held a first mortgage on the railroad to that extent. He expressed serious doubts of the propriety of additional issue of bonds, and said, "I want no Brownlow bonds." I do not remember hearing him converse on this subject for several years previous to his death; but understand he held Tennessee Bonds at the date of his death, several months since.

BYRD DOUGLAS.

Sworn to and subscribed before me, July 6, 1880.

LEWIS T. BAXTER,
U. S. Commissioner.

Deposition of R. T. Wilson.

United States Court,

SIXTH JUDICIAL DISTRICT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston Railroad Company,

vs.

THE MEMPHIS & CHARLESTON R. R. Co., and THE EAST TENNESSEE, VIRGINIA & GEORGIA R. R. Co.

Before WILLIAM H. DELANCEY,
Notary Public,
52 Broadway, New York.

Sept. 9, 1879.

Present—MR. ANDREWS, for Complainants; MR. HUMES, for Defendants; MR. TWEED, for Defendants.

RICHARD T. WILSON, a witness produced on the part of the Complainants, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

5 [Deposition taken subject to all legal objections of both parties.]

Direct examination by MR. ANDREWS:

1 Q. Please state your name, age and occupation.

A. Richard T. Wilson; banker and commission merchant; railroad President, and of full age.

2 Q. Please state what official positions you occupy in reference to the railroads of Tennessee.

A. I am President of the Memphis & Charleston
6 R. R. Co., of the East Tennessee, Virginia & Georgia R. R. Co., and a Director in the Knoxville & Ohio R. R.

3 Q. Are you a stockholder in these companies, or any of them?

A. I am a stockholder in all of them at present.

4 Q. State when your connection with Tennessee railroads began—what time?

A. In 1850, I think, or thereabouts. I first bought some stock in the East Tennessee & Georgia
7 Railroad. I think it was about that time.

5 Q. At the conclusion of the war were you a stockholder in any of the railroads?

A. In the East Tennessee & Georgia and not in any other railroad at the conclusion of the war that I think of now.

6 Q. At the conclusion of the war did you not increase your interest in the stock or securities of the Tennessee railroads?

A. Yes, sir.

8 7 Q. To what extent?

A. Well, I began to purchase stock in the East Tennessee & Georgia Road, some time, not immediately at the conclusion of the war. In 1866, '7, '8, '9, I purchased a pretty large amount of stock.

8 Q. How much?

A. That I cannot tell; but in round figures two hundred and fifty to three hundred thousand dollars

was the maximum investment of the stock at par value.

9 Q. What amount of investment did that represent?

A. Well, I don't know without referring to books.

10 Q. Will you please produce your books at the adjourned examination?

A. I cannot undertake to do that.

11 Q. Why not?

A. I don't know that you could find the account from the books; it is in memoranda, one thing and another, and I have got no books that really show it.

12 Q. Please produce the memoranda at the adjourned examination?

A. I don't think I can do that.

13 Q. Why not?

A. I don't think these questions are pertinent to the case. I am only answering for your accommodation.

14 Q. Do you decline to produce memoranda or books?

A. I decline to produce them unless advised by the Court.

15 Q. Are you a holder of bonds of any of these roads?

A. I am.

16 Q. To what extent?

A. I hold of Knoxville&Ohio bonds about forty thousand dollars. I hold a few of the East Tennessee & Georgia bonds divisional, and East Tennessee and Virginia divisional bonds—I think it aggregates about tthe sum of twenty thousand dollars or under.

17 Q. The Memphis & Charleston?

13 A. I hold largely; I suppose myself and firm have six or seven hundred thousand dollars.

18 Q. Those are the new so-called substitution bonds?

A. No, not at all.

19 Q. How many of them?

A. I think about four hundred and fifty thousand dollars.

20 Q. The stock that you bought in these Tennessee roads did not cost more than fifteen cents,
14 did it?

A. Yes, sir.

21 Q. How much more?

A. It cost an average of thirty or thirty-five cents, may be forty.

22 Q. Some was bought as low as fifteen?

A. No, none of it lower than nineteen that I now remember.

23 Q. The great part of it?

A. No, not the great part of it; very little of it
15 was bought lower than nineteen cents; none of it in fact that I now remember of; I paid for some of my stock from sixty-five to seventy-five cents and even more.

24 Q. I refer to the stock bought soon after the war?

A. I think it cost on an average from thirty-five to forty cents.

25 Q. The Memphis & Charleston bonds, what did they stand at?

16 A. We paid seventy-five cents on the dollar for those.

26 Q. When did you first hold an official position in any Tennessee railroad?

A. As President, I was elected in the summer or autumn of 1870.

27 Q. As a director?

A. As director, in 1868 or 1869.

28 Q. What were the prices of Tennessee bonds 17
when you became director?

A. That I can't state certainly, but the reports of the New York Stock Exchange show.

29 Q. Well, very much below par?

A. O, yes; they were below par.

30 Q. Who drafted the Tennessee Act of July 25th, 1869?

A. I don't know who did draft that; the first that I ever heard of the act was about this—-

31 Q. What do you know about the formation 18
of it?

A. In the autumn of 1868, I was asked by Mr. Branner, Mr. Calloway, and perhaps some others, to help devise some plan by which the railroads could raise a fund with which to retire at least a portion of their indebtedness to the State of Tennessee in an amount equal to the Sinking fund payments. The law in regard to payments into the sinking fund had been suspended from time to time and was then to take effect in 1870 at 19
four per cent. per annum. It was manifest to the companies, as their officers then told me, that they could not meet their sinking fund payments together with their other liabilities under their then worn out and dilapidated condition. I was asked if I could sell a bond on the railroad with which to provide a fund in such an amount as would probably meet the sinking fund payments. At that time I told them I did not think it was possible to sell a bond that they were then able to make. That their 20
own company bonds then outstanding and coming subsequent to the State lien were probably worth about forty-five to fifty cents on the dollar, and that any bond that they could make would be upon a parity with that bond, that is, it would come behind the lien of the State, and that it would not bring the then price of Tennessee bonds, which was I think in the sixties.

Judge Nelson who was then, I believe, the counsel for the East Tennessee and Virginia Railroad, of which John Branner was President, was called in to devise some plan by which the roads could retire so much of their indebtedness as their friends would take, and thereby raise a fund to meet their sinking fund payments, and in that conference it was suggested whether a plan could be devised by which the lien of the State could be proportionally transferred to a new bond and kept in operation. Then there was some discussion how it should be done —I drew up some memoranda, he and myself together—he took it, and that's the last I heard of the formation of the Act of 1869. The object of that memorandum was, as I say, to provide the right of substitution. There was no thought of conferring any new privilege upon the railroad companies in respect to the things with which they could pay the State. All agreed that we could pay our debts in any bonds of the State. We had the example of the Louisville & Nashville Railroad, which had paid off their debt in this way. The Legislature was glad to get them. The authorities of the State were urging them to pay off in any bonds they could (the roads I mean). The object of that Act was to faciliate broken down roads, that had no credit, like we were, to raise a fund with which they could probably pay off at least as much of the indebtedness as would equal the sinking fund payments which were shortly to begin. At the time the Act was passed we thought that any road of so little credit as the East Tennessee Road, and in fact almost every other road except perhaps the Louisville & Nashville and the Nashville & Chattanooga Road, had not sufficient means to meet the sinking fund payments. which had been postponed from time to time at the request of the roads, though all agreed it was asking more

than should be asked of the State of Tennessee to 25
further suspend the sinking fund payments. The object and purposes of this act were to facilitate the roads of poor credit to transfer the lien which the State held to their own bonds, and thus enable them to retire the bonds of the State and pay their own debt to the State; that was the great object of the Act that I heard of in the autumn of 1868. I came home after a general understanding that Judge Nelson should go on and elaborate it. I paid very little attention to that Act until next year; some 26
time after it was passed Mr. Murdoch of the Mobile and Ohio Road afterwards informed me that he drew the original act. The act as passed was not such as the memorandum I drew, and was not in all respects what I thought was to be passed.

32 Q. Wherein did it differ from the draft?

A. The main difference as I now remember, and there were quite a number of differences, was a foolish provision which limited railroad companies who had issued second mortgage bonds, to paying in the 27
same series of bonds, that had been loaned them, but that did not affect us, for we had issued no second mortgage bonds, as we supposed.

33 Q. Was not another of these foolish provisions in these words "provided that the interests of the bondholders should not be affected"?

A. I don't know about that; it was not in it when I saw it.

34 Q. You know Mr. Calloway very well?

A. Yes, I know Mr. Calloway very well. 28

35 Q. He was an officer of the East Tennessee, Virginia and Georgia Railroad?

A. He was President of the East Tennessee, Virginia and Georgia Railroad.

36 Q. Of course that company assisted in procuring its passage by the Legislature?

A. I don't know that it did.

29 37 Q. What do you think about it?

(Objected to.)

38 Q. Don't you believe that the East Tennessee, Virginia and Georgia Railroad company, or the companies then comprising what is now that company, had agents and representatives in Nashville to advocate the passage of that bill?

(Objected to as immaterial and irrelevant.)

30 A. That's the answer I make; it's immaterial and irrelevant.

(Complainant's counsel excepts to the answer.)

39 Q. Why did not the East Tennessee and Virginia R. R. Co. and the East Tennessee and Georgia Railroad Company proceed to take action under the Act of 1869?

31 A. For the very reason that they could not find any financier or capitalist who would supply the needed funds; they tried it over and over again and failed during the entire year of 1869 and well up into 1870.

40 Q. What do you know of the Act of January 20, 1870?

A. Nothing whatever about it that I now remember of.

41 Q. You have read it, have you not?

32 A. Yes.

42 Q. Did you not read it before the East Tennessee, Virginia, and Georgia Railroad Company undertook to deliver to the State some of its bonds?

A. I think I did; that is my recollection that I did.

43 Q. Your firm of R. T. Wilson & Co. were

the fiscal agents of the State of Tennessee for a 33
time!

A. No, sir; I don't think they were; if they were I have forgotten it.

44 Q. Well, they have had financial transactions with the State of Tennessee?

A. I think they occasionally lent them some money as other bankers, but that they had any other connection with the State I don't remember.

45 Q. How does it happen that the comptroller of Tennessee refers to R. T. Wilson & Co. as the fis- 34
cal agents of the State of Tennessee?

A. If he has ever done so it has escaped my memory. If you have a report and will let me see it, perhaps it may refresh my memory.

(Respondent's counsel requests that the report referred to be shown. Complainant's counsel declines for the present.)

46 Q. Now, after the East Tennessee, Virginia and Georgia Railroad Company commenced to act un- 35
der the legislation you have been testifying about, through whom were their transactions in the City of New York conducted?

A. Partly through R. T. Wilson & Co., and partly through the Fourth National Bank.

47 Q. You referred previously to Mr. Murdock, the Mobile and Ohio road, R. T. Wilson & Co., also attended to transactions for that company, did they not?

A. They did, in conjunction with other parties. 36

48 Q. What other parties?

A. I don't remember who all were in that syndicate; they were principally A. Iselin & Co., and Duncan, Sherman & Co.

49 Q. Was not William H. Hayes one of them?

A. He was not.

50 Q. Well, you employed agents and brokers in transactions in Tennessee bonds under this legislation, did you not?

A. In purchasing Tennessee bonds.

51 Q. Yes, sir.

A. Nearly all the bonds that I ever purchased were purchased through regular brokers here in the City of New York.

52 Q. Please give their names?

A. They would be very numerous.

53 Q. All that you remember?

A. Let me have time to refresh my memory on the subject before I answer that question.

54 Q. During the time you were purchasing Tennessee bonds, or about that time, were you not also a seller of Tennessee bonds?

A. Yes, sir; I bought and sold Tennessee bonds.

55 Q. And a borrower?

A. Yes, sir; borrowing generally as bankers do.

56 Q. You would sell and borrow quite largely at times?

A. Yes, sir; my transactions were considerable in them.

57 Q. What were the prices at the time you commenced to purchase under this legislation you have referred to?

A. Well, I suppose it might be fifty-four or fifty-five cents.

58 Q. When was that?

A. The 15th day of April, 1870, I suppose is what might be defined as the date of the first transaction I ever had under this legislation.

59 Q. About the same period with this legislation had not your companies or some of them refused to pay any interest in cash or a part of the interest in cash, and had tendered coupons of Tennessee bonds?

A. I don't know. I have no knowledge on that subject that I now remember of.

60 Q. Well, shortly after you commenced pur- 41
chasing was there not a decline in bonds?

A. No; on the contrary they advanced as I now remember.

61 Q. How long after you commenced buying did they decline?

A. They advanced, I say, as I remember.

62 Q. How long after did they decline?

A. Until they did decline; that I can't answer. The Stock Exchange reports will show.

63 Q. Didn't they decline within a moderate peri- 42
od after?

A. It is my impression they did not, but I cannot speak advisedly; my impression is they went up.

64 Q. Immediately?

A. Not immediately, but gradually.

65 Q. Well, didn't you pay any lower price during all your purchases than the price you paid for the first purchases?

A. Well, I can't say as to that. We would have 43
to go to the records of the Stock Exchange for that.

66 Q. Won't your books show it?

A. I reckon they would show it, but the Stock Exchange is public and my books are private property.

67 Q. Did you buy all these bonds on the Stock Exchange?

A. I think almost every bond, if not quite all.

68 Q. How many do you think you didn't buy on 44
the Stock Exchange?

A. I don't remember to have bought a single one out of the Stock Exchange, if I did it was very few. I should say not more than one hundred thousand dollars.

69 Q. In reference to these new bonds issued by the companies, at what price did the East Ten-

45 nessee, Virginia and Georgia sell at to the original purchasers?

A. Eighty-two and a half cents or a little over, the first million.

70 Q. Who were the purchasers?

A. Messrs. A. Iselin & Company principally.

71 Q. They were also purchasers of the Mobile & Ohio new bonds, were they not?

A. Well, no; not in the same sense. The Mobile & Ohio bonds were, I suppose, purchased by a syn-
46 dicate.

72 Q. Who formed that syndicate?

A. Messrs. A. Iselin & Company, Duncan, Sherman & Company, and R. T. Wilson & Co.—they are all I now remember.

73 Q. Was not the opinion of Charles Tracy attached to the prospectus for the sale of the new Mobile & Ohio bonds?

A. It was. That is, an opinion as to the validity of the substitution was attached to it, but this opin-
47 ion did not touch upon the subject of the lien of the holders of the Tennessee bonds.

74 Q. You read the opinion of Davies and Davis?

A. I saw it, but I don't think that I read it.

75 Q. You knew all about it at that time?

A. At the time of the sale of the Mobile & Ohio bonds or at the time of the sale of the East Tennessee, Virginia and Georgia bonds?

76 Q. Take the East Tennessee, Virginia and Georgia?

48 A. My recollection now is that that opinion came to my attention in the autumn of 1870; I should think so from some circumstances that occurred about that time with which I connect that opinion.

77 Q. Did you attach that opinion to any prospectus for the sale of the bonds of the East Tennessee, Virginia and Georgia?

A. I did not. I never issued any prospectus for

the sale of the East Tennessee, Virginia and Georgia 49
Railroad bonds that I now recollect of.

78 Q. Did you attempt to give it publicity in any way; the Davies and Davis opinion?

A. I only saw one copy, and the only publicity I gave it was to take it to firm of Evarts, Southmayd & Choate. Mr. Southmayd told me it was of no value whatever, and so did another one of that firm.

79 Q. Then in offering the East Tennessee and Virginia bonds and Mobile and Ohio bonds, or 50
either of them, you did not make any reference to the Davies & Davis opinion?

A. Well, it is proper to say that the Fourth National Bank were offering the East Tennessee, Virginia and Georgia bonds, and I never offered the East Tennessee, Virginia and Georgia bonds, or the Mobile and Ohio bonds unless I did so as the agent of the bank in the case of the East Tennessee, Virginia and Georgia bonds that I now remember.

80 Q. You were in frequent communication with 51
the Fourth National Bank?

A. Yes, sir.

81 Q. They knew of the opinion?

A. Yes, sir; they saw it, I think, but that I am not certain of.

82 Q. Did they offer it to the public in any way?

A. Not that I am aware of.

83 Q. The Memphis & Charleston Road delivered bonds to the State of Tennessee when?

A. It never delivered any. Mr. Iselin, of Iselin 52
& Co., bought the lien on that road from the State with his own funds, and took assignment of that lien under the provisions of law.

84 Q. That is the same Iselin to whom you showed the Davies & Davis opinion?

A. I did not show it to him.

85 Q. He knew of it?

53 A. I am not sure that he did.

86 Q. Were not you and Mr. Iselin present in the Supreme Court of the United States when this question of the lien of Tennessee bonds was being argued in the month of May, 1878?

A. I was present.

87 Q. At that time these Memphis & Charleston Railroad bonds had not been sold or negotiated?

A. They had then been sold.

88 Q. Had they been assigned?

54 A. Oh, yes, I think so, long before that.

89 Q. Well, there had been a bill pending before the United States Courts, involving that question, for some months before that time, had there not?

A. Well, as to what question that bill involved I must refer you to the records of the case; you are more familiar with it than I am.

90 Q. Have not those Memphis and Charleston bonds been lately placed on the Stock Exchange?

A. Yes, sir.

55 91 Q. Did you furnish the New York Stock Exchange with a copy of the Davies & Davis opinion?

A. I did not.

92 Q. Are they now being offered for sale?

A. I don't hear of any being offered.

93 Q. You said that you did not think that you had bought more than a hundred Tennessee bonds outside of the Stock Exchange. Where were those seven hundred and seventy odd old Tennessee and Pacific issues bought?

56 A. They were bought in the New York Stock Exchange, every bond of them, or else I got them in return for bonds loaned.

94 Q. At what price?

A. I can't give the price, I don't know. But whether I bought them or received them in return for bonds, I don't know; in either case they were got in the regular way, just as every other bond

that was bought, sold or borrowed or repaid. I did 57
not know they were Tennessee and Pacific bonds when I got them, I never knew what road the bond was issued to that I got; I had no means of knowing this at the time I bought the bonds.

95 Q. When you borrowed bonds as you stated, what was the object of borrowing them?

A. I borrowed bonds frequently, as I wanted them for business purposes.

96 Q. Was it not because you had sold bonds which you did not have to deliver? 58

A. That question infringes on my private transactions. It might have beeon for that, or it might have been because I wanted to raise them for railroads. I borrowed them for a variety of purposes.

97 Q. You said your transactions were very larg on account of the railroads?

A. I didn't say on account of the railroads, did I? I think you are mistaken.

98 Q. Under these substitution laws, you said?

A. No, I do not say that; I said I was employed 59
as a banker.

99 Q. Didn't I understand you that you acted largely as a banker for the railroad companies, in obtaining bonds to deliver under these substitution acts?

A. Yes, purely as a business transaction.

100 Q. Now, when you were employed as banker to buy these bonds on behalf of the railroad companies which I referred to in the first instance, when you borrowed bonds about that time, was it not be- 60
cause you had sold bonds and therefore had none to deliver?

A. Not always, by a good deal; now, for instance in the East Tennessee and Virginia Railroad I borrowed some bonds to pay that debt before I could buy them; it took time to buy them.

101 Q. Then after you bought them, or had borrowed them, I should say, to pay off this debt with,

61 and you afterwards had to buy them, didn't you try to buy them as cheaply as possible?

A. It certainly would be reasonable to suppose so.

102 Q. It was then your interest to have Tennessee bonds as low as possible?

A. It was to my interest, or the interest of my principal, to buy them as cheap as possible.

103 Q. To have them as low as possible.

A. I answer as I have.

62 (Answer objected to by complainant's counsel.)

104 Q. You also participated in transactions which took place under the act of the Tennessee Legislature for the sale of certain railroads, did you not?

A. Not directly.

105 Q. Well, how directly?

A. Not individually, I mean.

63 106 Q. Or through your firm?

A. Do you mean for supplying bonds to different roads; is that what you mean?

107 Q. Well, did you do anything under those acts?

A. Not that I remember as a firm.

108 Q. Well, in supplying bonds?

A. Yes, sir; in that way we did; we bought bonds for some of the parties who bought some of the roads.

64 109 Q. Don't your name appear as interested in some of those purchases?

A. Yes, as trustee for the East Tennessee, Virginia and Georgia Railroad.

110 Q. That was what road?

A. The Cincinnati, Cumberland Gap and Charleston Railroad.

111 Q. You were concerned in getting bonds for that purpose?

A. Yes, I bought bonds of that company for that 65
purpose as near as I remember.

112 Q. You were cognizant, then, of the proceedings that took place in Tennessee for the sale of the roads, were you not?

A. In a certain sense I was; I saw the paper advertisements, and also as trustee allowed my name to be used for the purchase of that road. In another sense, as to keep up with the judicial proceedings closely, I was not cognizant—in a general public way I knew of it. 66

113 Q. Do you know of a report made by the State Commissioners, that stated that the lien of the Tennessee bonds was one of the difficulties to be encounted in effecting the sale of the roads?

A. No, I do not; if there ever was such a report made, it has escaped my memory; I don't think I ever saw it. All that I remember on that point was Chancellor East's decision, a newspaper copy of which I saw, in which he decided that the bondholders had no lien. If the commissioners made 67
an adverse report I do not remember; I know nothing about it.

114 Q. Did you make any effort to call to the attention of Tennessee State bondholders in this city, that the questions in reference to paramount liens on railroads in Tennessee were then under adjudication?

A. I don't think I did.

115 Q. If you had called that fact to their attention don't you think it would have enhanced the 68
price of Tennessee bonds?

A. I didn't consider myself the agent of the bondholders, or that it was my duty to make any such publication of so fanciful a theory as I always believed that to be.

116 Q. Then I understand that you did nothing whatever to divulge any claim which was advanced

69 in respect of the interest of Tennessee bondholders in the railroads of the State?

A. I did nothing in their behalf, as I have already stated; I did not consider myself their agent.

117 Q. You stated that these new bonds of the East Tennessee, Va. & Ga. R. R. brought into the Company 82½ cents?

A. I said they were sold at 82½ cents.

118 Q. How much did the Company receive?

A. They received 80 cents for the first lot of them,
70 and an additional bonus of $4,500 for the first lot of a million; after that they commenced getting higher prices, and did get higher prices; ran up to 90 cents.

119 Q. Who got the difference between 80 and 90?

A. The Company in every instance. They sold the first lot at 82½, and the bank--the 4th National Bank--and the parties selling them got a commission.

71 120 Q. Who were those parties?

A. There was a contract that the bank was to sell them, and it employed other parties, giving one and a quarter per cent. commission on the sales.

121 Q. Was that contract in writing?

A. Yes sir, it was in writing.

(Please produce a copy at the adjourned examination.)

122 Q. What did the State bonds cost the Com-
72 pany?

A. Fifty-five cents on the dollar for the whole lot.

123 Q. Did not the railroad companies in which you were interested endeavor to procure the passage of the Act of January 20th, 1870?

A. I was not present at that session of the Legis- 73
lature, and have no personal knowledge on the subject.

124 Q. Was there nothing done at the meetings of the Board in reference to it?

A. Not at any meeting that I remember of when I was present.

125 Q. Was there anything done at any of the meetings?

A. I have seen no record of anything of the kind, I think it probably that they desired its passage as 74
far as I know.

126 Q. When these purchases of Tennessee bonds were made of what were known as the new bonds issued after the war, were they selling lower than those issued before the war?

A. There was a slight difference at that time as I now remember. I have seen the new bonds sell higher, and I have seen them sell lower; the new bonds were, however, generally slightly below the price of old bonds, which difference is correctly 75
shown by the reports of the New York Stock Exchange.

127 Q. A large proportion of the bonds delivered by the roads referred to were new bonds, were they not?

A. Yes, sir; but I don't remember the number or relative proportions of new and old bonds.

128 Q. That was the case with these seven hundred and forty bonds of the Tennessee and Pacific roads, was it not? 76

A. I don't remember them as bonds that were issued to the Tennessee and Pacific Railroad. The Tennessee and Pacific Railroad was built since the war, and therefore it is reasonable to conclude they were new bonds.

129 Q. Hadn't you or your firm made a loan on the Tennessee and Pacific R. R. bonds before you became a purchaser of them?

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129 Q. Hadn't you or your firm made a loan on the Tennessee and Pacific R. R. bonds before you became a purchaser of them?

77 A. Not that I know of. No, I think not.

130 Q. Was there not a loan made on them?

A. I don't know whether there was or not.

131 Q. Were you connected with the Memphis & Charleston R. R. in 1872?

A. I don't think I was.

132 Q. When you became an officer of Tennessee railroads after the war, had the railroad companies then possession of their property, or were some of them in the possession of the United States Govern-
78 ment?

A. They all had possession as near as I can remember.

133 Q. They had received them from the United States Government?

A. Yes.

134 Q. They had accepted the conditions on which the United States Government had agreed to turn them over?

A. I should say they had. The records of the
79 office will show better than I can tell.

135 Q. Didn't you or one of your firm send to the father of the complainant in this cause to borrow from him Tennessee bonds?

A. At what time?

136 Q. At any time?

A. Not that I remember of. He was frequently in the house; he was an acquaintance of Mr. Bosher.

137 Q. Do you know Dempsey Weaver?

80 A. Yes, sir.

138 Q. Was he a stockholder in Tennessee roads?

A. I don't know that he was. I think he was not. I wish to say further about Mr. Stevens, the father of complainant, that he was frequently in the house, conversed about Tennessee bonds, railroads, and other things; but whether he was ever applied to for the loan of his bonds I don't know.

139 Q. You testified before the Committee of the 81
Tennessee Legislature during the present year, did you not?

A. I did.

140 Q. You remember a suit instituted in the City of New York, to obtain an injunction against the payment of principal and interest of some Tennesee bonds?

A. When?

141 Q. At any time?

A. That runs over a very long space of time. 82

142 Q. Did you know of such a suit?

A. I did not know of it. I heard a suit was instituted to compel the State to pay some past due bonds, which under the law were preferred over the interest.

143 Q. Didn't you know of it about the time it was instituted?

A. Yes, sir, I heard of it about the time the suit was instituted, that such suit was or had been instituted, that was in 1868, as I remember, May or 83
June.

144 Q. About that time did you not purchase Tennessee bonds?

A. I don't think I did.

145 Q. How much did the Mobile and Ohio bonds sell for?

A. I can't answer that from memory.

146 Q. How much did the company receive?

A. That I can't answer from memory.

147 Q. Was there not a difference from what 84
the company received and what the bonds sold for?

A. That I can't answer from memory. As I remember they were bought at 82, perhaps 85, possibly 80 cents on the dollar (but this is from memory only). They have sold at various prices since they left the hands of the company.

85 148 Q. I don't mean that at all. I mean was there not a difference in price at which the syndicate took the bonds and the prices they sold them to the public?

A. I think there was, but how much I don't know. They were sold in Europe, and are largely owned by foreign bankers.

149 Q. You are familiar with the opinion of East, Pryor & Baxter?

A. I have seen it.

86 150 Q. When did you first see it?

A. I think I first saw it sometime in the autumn of 1870, probably 1871. I can't call to mind when I did first see it.

151 Q. Then you were conscious when you entered into these transactions for the purchase of Tennessee bonds and the issuance of the new bonds claimed to hold the lien, that there was a question as to the rights or existing as to the rights of the holders of Tennessee State bonds?

87 A. You say I was conscious of this claim. My legal advisers told me the opinion of Davies & Davis was utterly worthless. I so read the law myself and so believe it to be. I was not aware of this question at the time I entered into the purchase of Tennessee bonds.

152 Q. You were conscious at the time you participated in the issuance of the new bonds?

A. I don't believe I ever heard that that question had been raised by the bondholders then; the East
88 Tennessee, Virginia, Georgia R. R. Co. had paid its debt to the State.

153 Q. But you knew of it before the bonds were all sold?

A. In the case of the East Tennessee, Virginia and Georgia. I knew of it before they were sold. I mean the Davies & Davis' opinion.

154 Q. And also of the Mobile and Ohio?

A. Yes, sir. This question was not much con- 89
sidered; we considered it wholly mythical—no foundation in fact for it.

155 Q. Don't you know that quite a large amount of the bonds delivered by these companies to the State of Tennessee had never been in current circulation in the hands of the public?

A. No; I do not.

156 Q. Didn't you get some of them from or through some of the officers of the company?

A. I don't call to mind I ever did. If I did it has 90
escaped my memory.

157 Q. Don't you know that the public officers of the State of Tennessee, or some of them, stated in their official reports that the railroad companies of the State depreciated the price of Tennessee State bonds for the purpose of purchasing them under these Acts?

(Objected to as irrelevant.)

A. I do not know of any such reports being made. 91
If there were it has escaped my memory.

158 Q. Suppose you had gone into the market as an agent for the purchase of Tennessee State bonds, and purchased them straight along from day to day, or at stated intervals from week to week, would not that in a short time, with the large amounts of bonds you were to purchase, so greatly enhance the price of Tennessee State bonds as to have made their purchase very much more expensive?

92

(Objected to as irrelevant.)

A. The best answer I can give to that is the effect that the purchases did produce on the market. It enhanced the price of bonds considerably, as I now remember.

159 Q. Suppose you had not sold bonds during

93 that interval, would there not have been a still greater enhancement of price?

(Objected to.)

A. I would have executed orders very injudiciously if I had told Mr. A., B or C, I was obliged to have his bonds.

160 Q. Do you decline to answer?

A. That is my answer.

161 Q. Was not J. C. Mabry the person who
94 dealt for you in transactions in Tennessee bond at the time you are referring to?

A. Not that I remember, but I don't propose to give you a schedule of the progress of my general business in New York.

162 Q. Will you produce your books showing the transactions in Tennessee bonds on account of these railroads?

A. I will not.

163 Q. Will you produce those portions of them?
95 A. No.

164 Q. Have you no accounts entered into with those railroad companies at that time?

A. In some of them. What railroad companies do you speak of?

165 Q. The East Tennessee and Virginia, the East Tennessee and Georgia, and other railroads named in the title. Will you produce those accounts?

A. I refer to my counsel on the subject; if they decline to do so I will let you know.

96 166 Q. Will you produce those accounts showing very large sales of Tennessee bonds?

A. If I produce the account they will speak more accurately than I can here.

167 Q. Why did you not afford the purchasers of the New so-called substitution bonds or the New Mortgage bonds of these R. R. companies, issued for the aeged extinguishment t of this lien, so

far as claimed by you, why did you not afford them the same opportunity of judging whether Tennessee State bonds were liens upon the R. R.'s as you had for yourself, through the legal opinions which had been published? 97

(Objected to.)

A. You refer to the Davies & Davis opinion?

168 Q. Yes, sir?

A. As far as I know every bond cited the law under which it was issued, and they were public laws, and every man had sufficient opportunity of judging of the legal and binding effect as I had. And as to the Davies & Davis opinion, as I have heretofore stated, my counsel, in whom I place implicit confidence, stated it was wholly worthless and unsound. It passed from my mind and ceased to be considered by me as a matter of any importance whatever. 98

169 Q. You were one of the trustees of the Mobile & Ohio Substitution Mortgage Bonds, were you not? 99

A. I was.

170 Q. Well, did you think it equitable toward the purchasers of these substitution bo ds to furnish them with the opinion in favor of their validity as liens on the roads and not the opinion against their validity of liens?

A. I never furnished any opinion whether Mr. Tracy's or anybody else's as trustee. I simply in my capacity of trustee signed the bonds. As to the publication of the prospectus, I do not know who did that. It certainly was not brought before me as a trustee, however. 100

171 Q. Don't you know if the opinion of Davies & Davis was circulated among prospective purchasers of these substitution bonds that it would have

101 presented some obstacles, whether serious or not, to the proposed sale of these bonds?

A. I think if there was any proof wanted of that fact. I call your attention to the market price of the bonds, which, notwithstanding the Davies & Davis opinion and Mr. O'Conor's opinion these bonds are selling on the New York Stock Exchange to-day at 102½ to 103. In my opinion this shows that the public does not attach any importance to any opinion which declares these Tennessee State Bonds
102 liens upon the roads.

172 Q. Then you think these Tennessee bondholders took the risk in their own hands under the notices which were incorporated in the bonds and the reference to the public acts of Tennessee?

A. I don't know where the risk comes in; according to my view there was none, what views they may have taken I can't say.

173 Q. In purchasing Tennessee bonds you bought them at the prices you have named with
103 all the overdue and unpaid coupons attached?

A. They were sold in that way.

174 Q. Those coupons were overdue and the companies used them for the payment of overdue interest?

A. Yes, sir, they were so used.

175 Q. If the railroad companies of Tennessee had promptly paid their interest, would not that have prevented a great depression in Tennessee State bonds?

104 A. That I can't say. The retiring act of 1869 was the most judicious act ever passed on behalf of the State of Tennessee.

176 Q. Were not the discounts at which the bonds were selling one of the inducements for the execution of these acts?

A. It certainly did afford an inducement, for this reason: at that time the date of the passage of

these acts), there was hardly a railroad company in 105
the State that could raise money on its own bonds. This act came to their relief in regard to the sinking fund payments, and gave them the means or facilities with which to raise money to meet their engagements. A further inducement was to get the companies out of the hands of the State and to separate the railroad system of the State of Tennessee entirely from the State; first, because I believed the roads would be worth more if freed from interference of the State Officers and directors; and 106
secondly, thereby the State debt would be so reduced that it would enable the State to resume the payment of interest, and take her place as one of the great States of the American Union, which I thought would enhance the value of my property in the State fifty per cent., and I still think so; that was the moving cause in this operation. It has been worth millions of dollars to the State of Tennessee and her bondholders by reducing the obligations of the State in a greater degree than could 107
have been done otherwise.

Furthermore, I may be permitted to say that this legislation was in entire harmony with the wish of every debt-paying man at the time, or nearly so. I never saw but one man who was honestly in favor of paying the debt of the State that opposed it, and that was Hon. Henry Cooper, and he afterwards expressed himself delighted with the result that had been accomplished in the reduction of the State debt, and gave as his reason for then opposing it that he was afraid the railroads would not 108
retire their debts under it, but would use it for speculating in State bonds.

177 Q. Do you not know that the judiciary committee of one of the Tennessee Houses at the session of 1869, when the act was under consideration, reported a bill in lieu of the bill pending for that

109 purpose, in which they required the railroad companies to pay the State the identical bonds as constituting liens upon the roads to which they were issued.

A. I do not. If there was any such report I never read it.

178 Q. Don't you know that even on the very last day when that substitution measure was under consideration before one of the Houses of the General Assembly a resolution was offered for the
110 insertion of a proviso in that law in distinct terms saving the liens of the bondholders on the roads?

A. I don't think I ever saw it. I do not read legislative proceedings generally and never have.

179 Q. You were cognizant that the Legislature 1869–70, made investigation in reference to the frauds of the roads?

A. I never saw any report to that effect.

180 Q. Had you heard of that investigation?

A. I don't think I heard of such an investigation.

111 181 Q. Were not many of the bonds which you purchased, issues which were the subject of that investigation?

A. Not that I know of; but in a general way there was a repudiating party which wanted every bond investigated.

182 Q. These legislative investigations and proceedings were directed principally to the new bonds?

A. I think they were, so far as I know; also the
112 last investigation took in the old bonds?

183 Q. I do not refer to that. I only ask you about the proceedings of 1869–70?

A. I don't know as to those.

184 Q. Those purchases were largely delivered back to the State?

A. The new bonds were largely paid back to the State. Let me here call your attention to the fact

that all these investigations, if they ever did come 113
to my mind, would make very little impression on me, for the reason that after the Democratic party had obtained possession of the government, and had a constitutional convention, and two or three legislatures, as was the case, and took no action towards making any preference between new and old bonds, or towards repudiating one bond and sustaining another, with the single exception of those issued to the Mineral Home Railroad, I was more and more convinced that no discrimination between the differ- 114
ent classes of bonds would ever be made; and in confirmation of this the proposition of Gov. Marks to throw this bond and that over, as recommended in his message, and resume payment on a few, did not receive one single vote in the Legislature, as I remember, if it was voted on, and I think it was.

185 Q. Will you testify that none of these railroad companies, to which you refer as being connected with at that time, used any means whatever, or that none of their officials used any means 115
whatsoever, through publications or in any other mode, to depress the price of Tennessee bonds?

A. I will not testify to their action in any way, for I was not advised of all their actions; the records will inform you more accurately than I can.

186 Q. Don't you know that it was testified before a committee of the Tennessee Legislature this year that a sum of money was paid to a newspaper in the State of Tennessee and a receipt produced therefor, for the purpose of reducing or "bearing" State 116
bonds, and enabling the roads to buy them at low figures?

(Objected to as incompetent.)

A. No such testimony was given before that committee in my presence.

117 187 Q. Mr. Calloway, to whom you referred, was president of the company in 1872?

A. President of what company?

188 Q. The East Tennessee and Georgia Railroad?

A. Mr. Calloway was not president in 1872 of the East Tennessee and Georgia Railroad; I was president at that time.

189 Q. Did not a Director of the Memphis and Charleston Railroad, at one of the meetings held before the delivery of the bonds to the State by that
118 company, oppose making arrangements at that time for the purchase of the State bonds on the ground that the tendency in the State of Tennessee to repudiate the debt would be to lower the price of bonds, and enable them to buy at 30 or thereabouts?

A. Not that I know of; not since my connection with the roads, as far as I know or remember.

190 Q. Was not an effort made by the railroad companies, or some of them, to oppose or defeat the passage of the funding act of 1873, on the
119 ground that the passage of that act would enhance the price of bonds, and make it more difficult for the companies to purchase them?

A. Not that I know of or remember.

191 Q. Did you not expect when you negotiated the sale of some of those substitution bonds, that they would be sold to a great extent in Europe?

A. I might say that I hoped a market would be made for them there; as to what grounds I had for that expectation I don't call to mind just now.

120 192 Q. You stated that these substitution bonds contained a certificate in reference to their being liens; why did you not print the act of 11th February, 1852, under which the lien originated or extracts from it, with the same facility with which you printed an alleged transfer of that lien?

A. In what respect do you mean to say that we did print an alleged transfer of that lien?

193 Q. I am now asking why you did not print 121
the act of 1852, or any extracts from it?

A. The act of 1852 was not pertinent to the subject; I did not conceive that it had anything whatever to do with it; this transfer—this transfer of the lien was the authority under which the transaction took place, and therefore was deemed to be pertinent, and accordingly printed.

194 Q. You have had large experience in railroads, and in negotiating railroad securities; don't you know that it is customary to print and circu- 122
late, or at least offer facilities to intending purchasers, to get copies of the mortgage securing the bonds?

A. It usually is so. In this case I think the mortgages securing the bonds were printed or circulated in that way.

195 Q. Do you mean the act of 1852?

A. No, because it had no connection whatever.

196 Q. The mortgages made February, 1869, or '70, were they printed? 123

A. They were to some extent.

197 Q. Did they refer to the laws?

A. I think so; the bonds will show.

198 Q. Then I understand you that you considered that these new bonds were secured under the law of 1852?

A. I don't say so.

199 Q. Where did the lien get its origin?

A. I refer you to the laws for that.

200 Q. Well, don't you know that if you had 124
printed on the face of substitution bonds the language of the act of February 11th, 1852, "that so soon as the bonds of the State shall have been issued for the first section of the road, as aforesaid, they shall constitute a lien upon said section so prepared as aforesaid," and the balance of that section; it would at least have put the prospective purchas-

ers of the new bonds upon inquiry and examination as to whether the State bonds were a lien upon the properties or not!

A. What would be the effect of a garbled extract from that act, such as you have read, I am unable to say.

201 Q. Suppose you had printed the whole act?

A. I do believe that if the whole act had been printed, it would be generally construed as giving the bondholders no more connection with the railroad companies than the Emperor of China; I believe there is no more privity between the bondholder and the railroad company than with the Chinese Emperor.

202 Q. I ask you, if that act had been printed, whether it would not have put the bondholder on his guard to make some inquiry as to whether the Tennessee State bonds had a security on those roads?

A. He would have been able to judge for himself, but if he construed the acts as I did, he would come to the conclusion it didn't amount to anything; the act of February 11, 1852, does not provide for the identification of any bonds; he could not have told to what road it was issued.

203 Q. Suppose you had printed on the bond or circulated for the benefit of the purchasers of these new securities the message of Gov. W. G. Brownlow, of the State of Tennessee, or extracts from it, in which he declares the State of Tennessee holds this lien in trust for the benefit of the State bondholders?

(Objected to as immaterial and irrelevant, and a mere supposition without any proof.)

A. I don't think I have ever seen it, and the only way I heard of it was when it was brought into the

discussion of the Mobile & Ohio case at Washing- 129
ton in May, 1878.

204 Q. Suppose you had been the person to whom these bonds were offered, and the vendor had concealed from you the existence of an opinion given by the ex-Chief Justice of the State where the bonds were being offered for sale, would you have considered that equitable conduct on his part?

(Objected to as immaterial and irrelevant.)

130

A. In reply to that I say, if he had estimated the opinion as being worth as little as I did, when I had it examined by my learned counsel, in whose judgment I have perfect confidence, I should have considered that no obligation rested upon the vendor of those bonds to give it currency; I further say I never concealed the Davies & Davis opinion from anyone whomsoever in my life.

205 Q. Were not a large amount of bonds of the State issued and being issued at the time or shortly 131
before the passage of this act of 1869?

A. The records of the State will show very much better than I can, but I think not.

206 Q. Was not the issue of those large amounts of bonds authorized under the legislation of 1866 and 1867, and other acts passed since the war, the occasion of depreciating Tennessee bonds?

A. I must refer you to the State records as to the issuance of bonds; I never had any connection with the issuance of Tennessee bonds, and whether it 132
occasioned a depreciation in Tennessee bonds you can judge by the sales as well as I can.

207 Q. Were not the companies recipients of these bonds?

A. Some of my companies?

208 Q. The companies we first referred to?

A. They all received bonds at the close of the

133 war; it was almost absolutely necessary for them to receive new bonds in order to prevent the State from losing the entire debt, as the railroads were in a dilapidated and worn-out condition, bridges and cross-ties being rotten, iron machinery worn out, captured and destroyed, leaving the roads without credit or ability to earn money with which to make the necessary physical restoration, so as to enable them to earn money to pay the interest to the State or anybody else with.

134 209 Q. Then they received a large amount of bonds from the State, and after they were sold the act of 1869 was passed to enable the companies to buy back those bonds at the discount then prevailing?

A. The records of the State will show the amounts and times.

210 Q. I am not asking what the records show; please answer the question?

A. I don't think that was the object at all; I 135 have previously stated the purposes and objects of the act as far as I understood them.

211 Q. That was the effect, was it not?

A. You can judge of the effect. The State of Tennessee was broken down and crippled, and so was everybody else; Georgia bonds and other State bonds were pretty much the same way; Georgia six per cent. bonds were then selling about the same price as Tennessee six per cent. bonds.

212 Q. You know Mr. Mabry?

136 A. I know J. M. Mabry.

213 Q. During his visits to New York City in 1867, 1868 and 1869, or any one of them, was he not frequently in consultation with you?

A. Not very frequently, as he never did his general business with us.

214 Q. Sometimes he did?

A. Very rarely, indeed.

215 Q. Outside of your purchases for the railroad

companies, were you not a speculator in Tennessee 137
bonds?

A. That is a very singular question. I bought and sold a great many things on the market; I dealt in Tennessee bonds; I had a great many customers in them.

216 Q. Were you ever short of them?

A. That question is too personal; I don't propose to answer it.

217 Q. Was it not to your interest during the purchase of these bonds on account of the railroads 138
that the prices should be kept low?

A. As I now remember, I had very little interest in Tennessee bonds after the railroads commenced to buy. The efforts of my house were generally directed to fulfilling their engagements as bankers to the best of their ability.

218 Q. Who had charge of the legislative business of the East Tennessee, Virginia and Georgia R. R. Co. during the years 1868–69 and '70?

139

(Objected to.)

219 Q. Was not C. M. McGhee frequently in the city of Nashville during the period of 1869–70?

A. I was not there myself that I remember of, and I didn't see him there to the best of my recollection.

220 Q. Why will you not answer who had charge of the legislative business of these roads?

(Objected to as immaterial and irrelevant, 140
and because there has been no evidence that anybody had charge of such business, the question assuming something which is wholly untrue.)

A. That is my answer.

220 Q. Did you take any measures to inform the

holders of Tennessee bonds of any proceedings, executive, legislative or judicial, of what transpired in the State of Tennessee?

A. In respect to what?

221 Q. In respect to the liens on railroads?

A. I did not. It had been practically considered for twenty-five years or thereabouts that the State was the entire and absolute owner of the lien, and held it without any kind of interest on behalf of the bondholders. I think the idea of its having been a lien on behalf of the holders of State bonds would have been ridiculed in any part of Tennessee. The practical construction given to it from its very first inception up to the time the suit was commenced never hinted that the lien belonged to anybody else but the State. The State had thus practically construed the law during all this time, and I so read the law, and the bondholders up to the commencement of this suit had acquiesced in this construction.

222 Q. At the time of the passage of the act for the sale of delinquent railroads in Tennessee was it not contemplated by these railroad companies or by some of their officers, or other parties on their behalf, that they would become purchasers of these delinquent railroads, or some of them, at the sale which was expected?

(Objected to.)

A. I do not know that any such thing was contemplated; of course I don't know what was in the minds of the Corporation, but as to that having been the object of the passage of the act, I do not for one moment believe.

223 Q. Was it expected that they would buy these railroads and use them as feeders to the main line?

A. Expected by whom? 145

224 Q. By railroad officials?

A. I don't know what the railroad officials expected. It was expected that the highest and best bidder would become the owner of the roads, so far as I know.

225 Q. Will you testify that there is no record or paper of the East Tennessee, Virginia and Georgia Railroad Company or its officers which purports or indicates any action in reference to the passage of the act for the sale of delinquent roads, or any pur- 146
chases or transactions consequent thereon?

A. I have never seen such paper; if any such exists I don't know of it; I cannot testify to a nonentity; if it is permissible, I wish to state that any road which the East Tennessee, Virginia and Georgia Railroad bought at the State sales can be bought for less than it cost. They bought one road for $23,000 and sacrificed it for less than half its cost, to avoid being compelled to keep it up and run it, as its earnings did not any thing like pay the ex- 147
penses of operating and maintaining it, nor have the earnings of the other roads done so.

Adjourned to Sept. 16, 1879.
" " " 29, "
" " Oct. 8, "
" " " 10, "
" " " 11, "
" " " 13, "

OCT. 13, 1879. 148

Direct examination resumed by MR. ANDREWS;

226 Q. Through whom did the East Tennessee, Virginia and Georgia Railroad Company negotiate the sale of the new bonds?

A. The contract provides that the Fourth National Bank should sell the bonds either itself or through agents, for which it was to have 2½ per cent. com-

147 mission. The account of sales of bonds shows that they sold, under that contract, 1,393 bonds of $1,000 each, on which a commission of $34,824 was paid.

227 Q. Who were the agents or brokers who sold the bonds for the bank?

A. I think that R. T. Wilson & Co. sold most if not all of them, and in cases where they sold the bank gave them one-half of the commission paid it. This applies to the 1393 bonds sold as above stated. The accounts of sales show sales of $3,087,000 of the
150 bonds. No commission appears to have been charged on the excess of sales over the 1,393 bonds sold by the bank. Probably I was chosen President of the road and made no charge for sales after that time. These three millions and eighty-seven thousand dollars netted eighty-three $\frac{59}{100}$ cents on the dollar to the road.

228 Q. In what place did your firm of R. T. Wilson & Co. make the sales of the new bonds?

A. Mainly, if not entirely, in New York.

151 229 Q. Has not your firm paid the interest on the bonds?

A. They have not. The interest has been paid by the Gallatin National Bank as agent of the East Tennessee, Virginia and Georgia Railroad.

230 Q. Will you give the names of the persons who purchased these new bonds from your firm?

A. Adrian Iselin & Co., mainly, if not entirely.

231 Q. Where did Adrian Iselin & Co. sell those bonds?

152 A. I must refer you to them. Really I do not know where they sold them all.

232 Q. Will you state the names of some of the holders of those bonds?

A. I do not know who the present holders are.

233 Q. How much did A. Iselin & Co. pay for those bonds?

A. The accounts I have presented will show the exact price paid by A. Iselin & Co. and other parties, if there were other parties. 153

234 Q. Did not A. Iselin & Co. sell those bonds to a large extent in the city of Geneva, through the firm of Lombard, Odier & Co., and in other places in Switzerland?

A. I must refer you to them for that information.

235 Q. Will you produce the contracts between R. T. Wilson & Co. and A. Iselin & Co., in reference to the sale of those bonds? 154

A. I do not believe I have any written contract of it; I probably have copies of some letters for a portion of it.

236 Q. Please produce them at the adjourned examination.

237 Q. Will you produce the accounts on the books of R. T. Wilson & Co., with the firm of A. Iselin & Co., during the years 1869-70, '71 and '72, in relation to transactions in Tennessee State bonds and in the new bonds of the East Tennessee, Virginia & Georgia R. R. Co., or during any part of that time? 155

(Respondent's counsel objects to this question as incompetent and illegal, because it relates to and embraces matters wholly private, if they exist at all, between R. T. Wilson & Co. and A. Iselin & Co., and having no bearing upon the issues of this case.)

156

A. As the question has been explained by the complainant's counsel, I will confer with my counsel, and if advised that it is material to the matter at issue, I will produce the accounts, so far as they relate to the retirement of the debt of the East Tennessee, Virginia & Georgia R. R. Co., to the State, and the sale of its bonds issued in lieu thereof.

157 238 Q. Did not any paper pass from A. Iselin & Co. to you or your firm, showing at what price A. Iselin & Co., or their agents, sold the new bonds?

A. No such paper has passed that I now call to mind, as I don't remember it, and I don't think there has.

239 Q. Have you not stated that there was a profit made on the sale of the new bonds, over and above the amount you stated as having been received by the company?

158 (Respondent's counsel objects, because it neither gives the time, place or person to whom the statement is alleged to have been made, and because the question is without relevancy or competency in its present indefinite shape.)

A. In reply to that, I don't know whether I have or not, in the case of East Tennessee, Virginia & Georgia R. R.

159 240 Q. Will you produce a list, as far as you can obtain it, of the holders of these new bonds, as well on the East Tennessee, Virginia & Georgia R. R., as on the Memphis & Charleston, and the Nashville, Chattanooga & St. Louis?

A. I don't know who holds them except myself; I hold some of the Memphis & Charleston; no others.

Adjourned to Oct. 14th, 1879, at 11 A. M.

160

NEW YORK, Oct. 14, 1879.

Direct-examination resumed by Mr. ANDREWS:

Complainant's counsel offers in evidence "Report of Committee appointed to investigate the State Debt—Nashville, Tenn.," with testimony annexed to same, 1879, including

that of R. T. Wilson as an admission and de- 161
claration.

Respondent's counsel objects to the same as incompetent, illegal and hearsay.

It is agreed that this report and testimony may be produced in Court subject to the objection of respondents without attaching this report and testimony to the deposition of this witness.

162

The witness, further answering the direct interrogatories, says:

Upon further consideration respecting the inquiries contained in interrogatories 13, 14, 15, I say that I have made careful examinations of the memorandums of purchase of the R. R. stock in my possession, and find that these show that I bought from the close of the war up to 1872 the sum of about $292,000 of the par value of the stock 163
of the East Tennessee & Georgia and of the Consolidated Company at an average cost of $37\frac{65}{100}$ on the dollar.

In further answer to interrogatory No. 73, I herewith file a copy of the opinion of Charles Tracy, which was referred to as being published with the prospectus of the Mobile & Ohio bonds in my answer to said interrogatory. Marked Complainant's Exhibit No. 1. W. H. D. L., Spl. Exr.

In correction of my answer to the 76th interroga- 164
tory I now say that I first saw the opinion of Davies & Davis in the latter part of May, 1870, but I don't remember to have read it then or since then.

In further answer to direct interrogatories Nos. 124, 169, 170, 171, 172, I herewith submit and file a copy of the contract with the 4th National Bank for the sale of the substitution bonds of the East

165 Tennessee, Va. & Ga. R. R. Co., Marked Complt's Exhibit No. 2. W. H. D. L., Spl. Exr.

I also file herewith copy of the contracts between R. T. Wilson & Co. and the East Tennessee, Va. & Ga. R. R. Co., under which the bonds of the State of Tennessee were sold to the East Tenn., Va. & Ga. R. R. Co. with which to retire its debt to the State; and also statement or extract from the books of R. T. Wilson & Co. of the account as rendered to the road, embracing the entries made on their
166 books of said transactions. Marked Complt's Exhibit No. 3. W. H. D. L., Spl. Exr,; and Complt's Exhibit No. 4. W. H. D, L., Spl. Exr.

In further answer to direct interrogatories 137, 8 and 9, as to a member of my firm applying to Calvin Stephens, father of complainant, to borrow Tennessee bonds, on inquiring I am informed by Mr. C. H. Bosher, my partner, that he did so apply.

In further answer to direct interrogatory 156 I think I saw the Davies & Davis opinion in the latter
167 part of May, 1870, being about one month after the East Tennessee, Virginia and Georgia R. R. Co. had bought most of their bonds with which to pay their debt to the State.

In reply to direct interrogatory No. I herewith submit and file the following correspondence between R. T. Wilson & Co. and Messrs. A. Iselin & Co., which exhibit all the contracts made for the sale of the East Tennessee, Virginia and Georgia substitution bonds by the former to the latter, viz.:
168 Copy of letters from R. T. W. & Co. to A. Iselin & Co., dated 13th May, &c.

(Marked Complainant's Exhibit No. 5, W. H. D. L., Special Ex'r.)

In reply to direct interrogatory No. requesting the production of the accounts as shown by R. T. Wilson & Co.'s books with Messrs. A. Iselih & Co.,

I have carefully examined the books of R. T. Wil- 169
son & Co., and they do not contain a single account with A. Iselin & Co., during the years named, and I herewith file copy of the account of A. Iselin & Co. rendered, showing the purchase of the only interest I ever had in any of the substitution bonds of the East Tennessee and Virginia R. R. Co.

(Marked Complainants' Exhibit No. 6, W. H. D. L. Special Ex'r.)

170

That interest occurred in this way—at the outset of the sale of the East Tennessee, Virginia and Georgia substitution bonds, in order to give them a start, I agreed in conjunction with two other parties to buy $125,000 of these substitution bonds. This was in May, 1870, and before I knew Mr. Iselin, as my acquaintance with him began in the early part of that month as I now recollect. The arrangement to sell to Mr. Iselin was afterwards entered upon, and to show my faith in the bonds, I 171
still proposed to take an interest in the purchase of the $125,000 with an option of $375,000 of the $500,000, which I had been in treaty about with the other parties. They fell out, and I told the company that I would take in my name the $500,000 interest, but that it must take two-fifths of these $500,000 for its own account.

The road and myself did take this interest and the bonds were offered in Europe, but the Franco-German war intervened and prevented the sale of 172
most of them and the transaction was incomplete, and in August, 1870, A. Iselin & Co. bought out this interest, paying $7,500 for it, $4,500 of which was placed to the credit of the road and $3,000 to my credit. This is all the interest I ever had in these bonds directly or indirectly, and this interest came about in the manner I have stated, nor did I have

173 any interest in the profits of the sales made by Messrs. A. Iselin & Co., or anybody else, of these substitution bonds except as above stated.

Cross-examination by MR. HUMES:

241 x Q. Mr. Wilson, you have stated in your examination in chief the feelings of the railroad men and their action respecting the origin of the Act of 1869-70. What was the feeling of the leading men of the State in regard to it as a measure of
174 State relief, so far as you know?

A. Well, in reply to that question, it is proper for me to state that at the interview between Branner, Calloway, Judge Nelson, and myself, previously referred to, the question of how it would be viewed from the side of the State was thought of, and it was agreed that either Judge Nelson or Mr. Calloway should ascertain the feeling of prominent citizens as early as could conveniently be done, and before making any move toward having it enacted
175 into a law, whereupon some of them conversed with a few prominent citizens about Knoxville, (among whom was Ex-Gov. Brownlow, who, I believe, had taken or was about to take his seat as United States Senator), upon the subject of the State's interest in the matter.

I was informed that he seized upon the idea with great interest, and said that it was the very thing that the State needed. That it would afford a remedy for the embarrassed condition of the State
176 finances, and enable it to get in much more rapidly than could otherwise be done its outstanding indebtedness, which in the end, he said, would work out the salvation of the State's credit, and if it could be successfully carried out, would so reduce the debt as to enable the State to meet the interest without serious embarrassment to her citizens. This much I learned while I remained at Knoxville,

say two or three days after this interview respecting the Act. After which time as I now remember I returned to New York, and received frequent letters from Mr, Calloway and others of the great popularity of the measure as viewed from the State's side of the question. All agreed, so far as I heard, that any plan which would result in so largely reducing the outstanding indebtedness of the State must inevitably work a great benefit to it. And as I have previously stated, I did not know of but one man in the State who was honestly in favor of paying the debt, who did not advocate the measure in the most hearty manner, solely as a matter of public interest to the State, to say nothing of the railroad interest in it, and that one man afterwards upon seeing the great reduction of the debt that had been effected by it, said that he most heartily approved of it. 177 178

242 x Q. In interrogatory in chief No. 45, when counsel for complainants asked you as to report of the Comptroller showing that R. T. Wilson & Company were fiscal agents of the State of Tennessee, did he produce such report, and did you not request him to do so, and has he not wholly failed to do so during this examination? 179

A. I state I did request him, and he has failed to do so.

243 x Q. What sources or means of information did the [holders of] State bonds residing in Tennessee and New York have of these settlements of the railroads with the State while they were going on? 180

A. The matter was a subject of public discussion in the papers of Tennessee, and the large purchases of Tennessee bonds attracted public notice more or less through the financial columns of the papers of New York, which attributed the large transactions in them to purchases made for

181 railroad account, with which to retire their indebtedness to the State, and in addition to this the substitution bonds issued in lieu of the Tennessee State bonds were advertised in New York, for sale, as is shown by the following copies of advertisementst from which it will be seen that each advertisement gave notice that the substitution bonds had been issued in lieu of the debt of the State of Tennessee, and carrying its lien by assignment from the State. I present and file herewith copies of these adver-
182 tisements and names of the papers in which they were published as Exhibits to my deposition.

(Marked Respondent's Exhibit No. 1.—W. H. D. L., Spl. Ex'r.)

244 x Q. Do you know of or did you ever hear of from the year 1865 to the bringing of these suits of any coupon holder of the bonds of Tennessee presenting them for payment to any railroad com-
183 pany to whom the bonds had been issued?

A. No, I never did; nor do I believe any coupon holder ever did make such a demand against any railroad company. I think if such a demand had been made I certainly would have known of it, as I had direct relations with a great many roads and knew intimately the officers of almost every railroad to which bonds had been issued. If such a thing had ever transpired I would have been informed of it. But on the contrary, notwith-
184 standing the fact that the State of Tennessee was in default upon its interest from the outbreak of the war up to the date of the bringing of this suit, with a few exceptional times when it was paying, during all this time the bondholders by their repeated funding of their past-due coupons into the new bonds of the State and by registering their bonds as straight bonds of the

State, time and again said by their acts that they 185
looked to the State alone as their debtor, and never intimated any claim against a railroad.

245 x Q. Who were the Commissioners for the sale of delinquent roads referred to in interrogatory in chief No. 115, and what was their character and standing in Tennessee?

A. They were Ex-Judges Robert G. MacKinney and Archibald Wright of the Supreme Court of the State, and Francis B. Fogg, an eminent lawyer. And it may safely be said that for probity, legal 186
learning, and spotless character no three men in any State enjoyed a more enviable reputation. They were all men of independent fortune, over sixty years of age, without any then or former connection with the railroads; being citizens whose patriotism and fidelity to the welfare of the State was not questioned by a single individual in it. While MacKinney and Wright were on the Supreme Court for a great many years the decisions of the Court of which they were two out of the three commanded 187
the respect of the legal mind of America.

The lawyers employed by them to conduct the business were the Hon. Edwin Ewing, Hon. Wm. F. Cooper and Wm. B. Reese; the two former of whom are universally acknowledged to be the two leading lawyers in the State. And Mr. Cooper was before the war and now is one of the Supreme Judges of the State.

246 x Q. In your answer to interrogatory in chief No. 141, you say that the father of the complainant 188
was frequently in your office, and that you conversed with him about Tennessee bonds and railroads and other things. Did he know about these railroad settlements that were going on?

A. I do not certainly remember whether he did or not, but my impression is I told him as I uniformly did holders of Tennessee bonds who talked to me on the subject.

247 x Q. Please state the present price of East Tenessee, Va., and Ga., Railroad stock?

A. It is about 37½ cents on the dollar.

248 x Q. How many dividends have you received from the East Tennessee, Va. and Ga. Railroad since the war?

A. I think five or six dividends of 3 per cent. each.

249 x Q. You stated in your examination in chief that the opinion of Charles Tracy was published;

190 did that opinion touch upon the subject of the lien of the Tennessee bondholders?

A. It did not.

250 x Q. Will you produce that opinion?

A. I will; and I now herewith file a copy as an Exhibit to my deposition.

(Opinion already filed as Complainants' Exhibit to No. 1 hereto. W. H. D. L., Sp'l Ex'r.)

191 251 x Q. What other instance besides the one given in your answer to interrogatory 31 in chief do you know of where a railroad company made a payment or payments on their debts to the State in any bonds of the State. Please give any additional reasons which you may have going to show that the payment of the railroad debts to the State in any bonds of the State with or without the legislation of 1869 and 70, was in accordance with the custom and wish of the State?

192 A. Besides the Louisville & Nashville R. R. Co. so paying off its debt after the war, say in 1866 and before the Acts of 1869 and 1870 were passed, I have the example of the payment made by the East Tennessee and Ga. R. R. Company on the 4th of June, 1862, in which that company paid $100,000 of its indebtedness to the State in any bonds of the State. It is true that this payment pur-

ports to be made to the sinking fund, but it is to be 193
remembered that the sinking fund payments had been suspended the year previous by Statute, and there was no payment due to the sinking fund, as is fully shown by a previous receipt for nine thousand dollars, dated November 2, 1861, which receipt together with other receipts for payments made by that company, I herewith file,

(Marked "Respt's' Exhibit, No. 2." W. H. D. L., Spc'l Ex'r.)

194

I also herewith file a certified copy of the account of the East Tennessee and Georgia Railroad Company with the State,

(Marked "Resp't's Exhibit No. 3." W. H. D. L., Spc'l Ex'r.)

This shows that this payment and others were passed directly to the credit of the company on the books of the State when made. No man in, or out of the State, up to the time of the passage of the Acts of 1869 and 1870, so far as I ever heard of, for 195
one moment supposed that it was necessary to enact further legislation in order to get the privilege of paying the debts of the roads in any bonds of the State—that is, no railroad man ever supposed such a thing was necessary. They had had too many urgent demands made upon them for payments to the sinking fund, to admit of their believing that it was necessary to procure legislation in order to get the privilege of paying their debts in the identical thing in which the State was constantly 196
pressing them to pay without such legislation; hence, as I have stated in my direct answer, the sole and whole object of the legislation of 1869 and 1870 was to enable the roads to substitute their own bonds so as to carry with them the lien of the State, to raise money with which to buy Tennessee bonds to pay their debts to the State, and thus meet the

197 pressing demands of the State, which were shortly to be made upon the roads in the way of their dues to the Sinking Fund. These Sinking Fund payments as stated in answer to direct interrogatory No. ——were to be resumed in 1870.

252 x Q. You say in your answer to Direct Interrogatory No. 95, that you did not know that the Tennessee and Pacific bonds that you bought or received in payment for bonds loaned were issued to the Tennessee and Pacific Road at the time
198 you bought them, and that you did not know to what roads bonds were issued when you bought them, and that you had no means of knowing this at the time you purchased bonds. Are you familiar with the custom of buying and selling Tennessee bonds on the New York Stock Exchange, and, if so, please state the manner of buying and selling bonds there, and also please state whether the purchaser of bonds has any means of knowing to what road, or whether to any road at all, or for
199 what purpose, the bonds that he is buying were issued at the time he buys them?

A. I am perfectly familiar with the rules and customs of buying and selling Tennessee bonds at the New York Stock Exchange. The bonds are classified into "Old Tenn. 6s," "New Tenn. 6s," and "New Series Tenn. 6s." The old bonds embraced all 6% bonds issued before the war to railroads, either as loans, or in payment for stock subscriptions, those issued to turnpikes, to the
200 agricultural bureau, to build the capital with, and for stock in banks, and for any purpose whatsoever —of these there were outstanding at the close of the war about $15,000,000 in round numbers issued for various purposes.

The New Tenn. Bonds embraced the interest funded under the act of 1866, and also the new

bonds loaned to railroads and turnpikes, and also 201
some that were issued and sold to raise money for
State purposes.

The New Series embraced bonds funded under subsequent funding acts to the act of 1866.

Now when a purchase is made in the regular way for "old," "new," or "new series," as the case may be, it is for delivery the following day, or it may be for cash, which means the same day; or it may be seller sixty, which means that the seller must deliver on or be- 202
fore sixty days from date of sale. In any case a delivery of any bonds of the class which is sold fulfills the obligation, and is a good delivery. The buyer cannot tell until his bonds are delivered to him at his office either the next day, or, if sold for cash, the same day, or, if sold seller sixty, sixty days hence, either the number of his bond, or for what purpose it was issued, nor, if issued to a railroad, to what railroad. No man buying a bond in the New York Stock Exchange ever did know to what 203
road it was issued when he bought it, or whether to any road at all, nor could he do so under the rules of the Stock Exchange.

253 x Q. Has there been any difference at any time between the prices of old Tenn. 6% bonds, issued to railroads as loans, and those issued by the State for purely State purposes? Please answer the same question as to new bonds?

A. There never has been any difference in the price of either old or new 6% bonds between those 204
issued to railroads and those issued for State purposes.

About the time the parties were preparing themselves with bonds, or some of them, upon which to bring these suits, I heard that they were going round from office to office, seeking to exchange the bonds they had for bonds on solvent roads, and were offer-

205 ing as high as one cent on the dollar difference between bonds issued to no roads or to insolvent roads and those issued to solvent roads, and this is the only exception, and even it is not conducted through purchases and exchanges made at the Stock Exchange, which rules the prices of bonds of all kinds.

254 x Q. Did you or your firm ever make any loans on Pacific and Tennessee bonds inquired about in direct interrogatories 131, 132, 133, 134, to those
206 holding them?

A. Neither I nor my firm ever made any loan on Pacific and Tennesse bonds, either directly or indirectly, to those holding them.

255 x Q. Direct interrogatories 173 and 174 ask why you failed to afford Tennessee bondholders the same opportunity of judging whether the Tennessee State bonds were liens upon the railroads as you had yourself. Did you ever refuse or deny to any Tennessee State bondholder equal means of know-
207 ing his rights which you had yourself?

A. I never refused or kept back from them (the Tennessee bondholders) any information upon this subject, but on the contrary I told one and all, when asked (and I was asked by a great many of them respecting the probable value of these bonds), what was being done, in a general way, by the roads in retiring their debts to the State, and frequently alluded to the laws under which these settlements were being made, and, so far as I now recollect, the
208 bondholders, without a single exception, approved of the roads paying their debts to the State, and joined with me in the opinion that this was the best and surest way of restoring the credit of the State. Besides this the purchases of bonds by the roads and the payment of their indebtedness to the State, and the sale of the New Railroad substitution

bonds were matters of public notoriety both in New 209
York and in Tennessee.

256 x Q. Have you copies of the receipts of the payments by the East Tennessee, Virginia and Georgia Railroad Company to the State of its debt, if you have file them?

A. I have and I herewith produce and file them.

(Receipts produced, and marked Recpts. Exhibits No. 4, W. H. D. L., Spl. Ex'r.)

Adjourned to Oct. 23d.

210

Oct. 23d, 1879.

R. T. WILSON recalled and examined by Mr. ANDREWS:

Re-direct examination:

257 Q. Have you been able to find the statement or letter referred to in your previous examination?

A. I have been unable to find anything that the question referred to, as I understood it.

258 Q. Is paper now shown to you a copy of the 211
document signed by you and which paper is now offered in evidence and marked "Complainants' Exhibit No. 7, W. H. D. L., Spc'l Exr,

A. With the exception of some entries on the back of the 10th page and some minor errors of copy, I think it is. This paper which purports to be a copy of a letter, and addressed to John T. Terry, was hastily drawn by me and read to Mr. Terry, but as I now remember never delivered to
him. In explanation of some statements it con- 212
tains, I here state that I had nothing more to do with the act of February 25th, 1869, nor with its preparation or passage, nor with the act of 20th January, 1870, nor with the acts for sale of Insolvent Roads than I have previously stated in this deposition. The statement in this letter as to the preparation of the act of February 25th, 1869, and

213 that I induced its passage, simply meant to say that at the conference with Judge Nelson and others, previously mentioned in this deposition, I drew the memorandum of the main features of the act, and left it with Judge Neilson, telling him and the railroad men with whom I was in conference, that I thought if a law of that kind were passed, it would enable the railroad companies to retire at least a portion of their indebtedness to the State. I did not mean to say in this letter that I had anything
214 more to do with the passage of the act, than I have previously stated in this deposition, nor with the passage of the act of 20th January, 1870. Respecting the statement contained in this letter as to the legislation for the sale of defaulting roads, I only meant to say that I had, in common with others, suggested and heartily approved the State's selling its interests in the defaulting roads. This suggestion, however, as I now remember, was not original with me, nor was it made at the conference with Judge
215 Nelson and others, previously referred to in this deposition ; nor did I ever, so far as I now remember, solicit the passage of the bill in the legislature or any part thereof for the sale of the defaulting roads ; although as a State measure and as an owner of a large property interest to be benefited, and subserved by anything that would promote the public welfare of the State, I earnestly favored these measures, sincerly believing that their adoption and carrying into effect
216 would save the State many millions of dollars, and from a most careful and intimate observation of the effects produced under this legislation, in the way of reducing the State indebtedness, I am more and more convinced of the soundness of my judgment in respect to that matter believing that it has resulted in the saving to the State of several millions of dollars. I

wish to say further, in respect to the classifying of 217
myself as a railroad man in said letter, that I only meant to say that I was a director in one of the roads, and a large stockholder in it. I was not at that time an officer in a railroad company, except as previously stated.

This letter was induced by an intimation coming from Mr. Terry to the effect that if the railroad companies did not raise a fund or contribute towards a fund to procure a settlement of the State debt with the State, that the bondholders would 218
probably sue the railroads. On page 5 and line 13 it should read "and the State its debt," instead of "their." On the 18th line of the 5th page read "defeat" instead of "deferred." In explanation of the sentence commencing on the 3d line of the 7th page of said letter, in which I state that my associates and I retired about fifteen millions of the debts of the railroads, I did not mean my partners and myself; but I meant to say that my firm and such houses as Drexel, Winthrop & Co., now Drexel, 219
Morgan & Co., Adrian Iselin & Co., The New York Guaranty & Indemnity Co., Duncan, Sherman & Co., Roosevelt & Sons, and other prominent houses in this city who co-operated with me, had retired about that amount of indebtedness of the railroads to the State, which embraces the payment of debts under the retirement act, and the payment made by the parties purchasing the sold roads, through financial arrangements made by myself and my associates. On the 15th line on page 7 the word "for" 220
should read "or." On the 17th line of page 7 read "usually" for "usual."

Cross examination by Mr. HUMES:

259 x Q. In your answer in chief you have said the State saved millions by the sale of insolvent

221 roads, and by effecting the settlements with solvent roads by and under the acts of 1869 and 1870. Now please state the facts as to the sold roads, what they sold for, and what they are now worth; and what was the operation and effect as to the solvent roads, and how the State saved money through the retiring of the debts due to it from the solvent roads?

A. The Nashville & North Western R. R. was sold for $2,400,000, being a sum very much more
222 than it was worth, as will appear from the following statement of its earnings and expenses:

That road, having defaulted on its interest, fell into the hands of the State under receivership, and was leased to the Nashville & Chattanooga R. R. Co., which operated it for eighteen months previous to the 30th of June, 1871. The report of the lessee shows that it earned during this period $606,605.21. And that during the same time there was expended upon it..... $983,684 44

223

Showing for that period a net loss of.. $377,079 23

For the next ensuing twelve months it was operated by the Nashville & Chattanoogo R. R. Co. as purchaser. The earning for the fiscal year ending June 30, 1872, were..... $613,679 13
Operating and renewal expenses..... 984,526 38

224 Net loss..... $370,847 25

For the next fiscal year, ending June 30th, 1873, the earnings were..... 642,681 36
Operating and renewal expenses..... 559,150 33

Net income..... $83,531 03

For the following fiscal years, the expenses of this

division of the Nashville, Chattanooga & St. Louis 225
Railway are consolidated with the general expenses of the whole line.

The freight earnings, however, are kept separate, and the passenger earnings are assumed upon the same relative basis to the freight earnings, which they bore during the previous years when they were kept separately. Showing the following result:

Total income for the year ending June 30,				1874,	490,464 94
"	"	"	"	1875,	426,066 74 226
"	"	"	"	1876,	416,454 49
"	"	"	"	1877,	350,230 38

At the same relative rate of expenditure as was made in operating the road for the fiscal year ending June 30, 1873, this would show each of the succeeding years to pay a net loss, which was probably not the case, but is certain that the net income of the road for these four years was not sufficient to pay the interest upon one half what it cost.

For the eighteen months that it was operated for 227
account of the State, by the Nashville & Chattanooga R. R. Co., as receiver and lessee, the net loss was about $377,000.

For the first year after the purchase of the road, it was very nearly as large, and had it remained in the hands of the State, and not been sold out, it is almost certain that the State would have been brought in debt every year on account of operating expenses, and would ultimately have lost its entire debt upon the road. I am intimately acquainted with the road, 228
having had large interest in the Nashville, Chattanooga & St. Louis Railway, of which it formed a part, and have been a careful observer of its operations, from the day it was purchased up to the present time, and I most unhesitatingly state that I do not believe, from the best of my judgment, that it was worth one-half what the State sold it for.

229 Then, further, the Memphis and Charleston Railroad Company bought from the State, through Wicks & Donnigan, the McMinnville, Manchester and Southwestern Railroad and the Winchester and Alabama Railroad, paying to the State for these roads $600,000 in Tennessee bonds, carrying coupon of January, 1871. It also paid to the stockholders of these companies, as part of the purchase money, in order to remove some complications, $350,000 in the stock of the Memphis and Charleston Railroad
230 Company, and expended in grading and farther extension of the Southwestern road $137,691.78 in cash.

After operating these roads for several years, during which time the net income did not amount to half enough to pay the interest on their cost, they were sold to the Nashville, Chattanooga and St. Louis Railway for $320,000 of the forty year six per cent. bonds of the latter company; these bonds were sold at about 70c. on the dollar, being about
231 the same price which the Memphis and Charleston Railroad Company paid for the State bonds with which to make payment to the State. The accounts on the books of the Memphis and Charleston Railroad Company show a clear loss on this venture of $557,791,93, which is correct, and I believe that the Nashville, Chattanooga and St. Louis Railway, as purchaser, paid the full value for the roads bought from the State by the Memphis and Charleston Railroad Company, upon which this loss was made.

232 I will take next the Cincinnati, Cumberland Gap and Charleston road, which was purchased for $300,000 in Tennessee State bonds by C. M. McGhee and myself, as trustees for the East Tennessee, Virginia and Georgia Railroad Company, which has since been operated by that company in the most economical manner, and the income of which has failed to pay operating expenses, to say nothing of

interest on its cost, by from fifteen to eighteen 233
thousand dollars. Hence thus far this road has
really been worth nothing to the purchasers, and
had the State continued operating these roads
through receiverships I give it as my deliberate
conviction that it would have been brought in debt
every year on account of their operating expenses,
and long before this time the roads would have
been so run down and worn out as to render them
unsafe, and incapable of being operated at any net
profit, and in the end the State would have lost 234
most if not all of the debt which it held upon
them.

The East Tennessee, Virginia and Georgia Rail-
road Company bought the Rogersville and Jefferson
Railroad for $23,000, and after keeping it for several
years, and operating it at a loss, sold it for notes,
on which it realized about six thousand five hun-
dred dollars.

The Memphis, Clarksville & Louisville R. R.
which was purchased by the Louisville and Nash- 235
ville road, was in such a dilapidated condition as to
make it almost impossible to operate it except at
a loss, but through the support given it by the
Louisville & Nashville Railroad in the shape of
means and business it has been restored, and per-
haps is now as valuable, if not more valuable, than
any of the sold roads; without this support, how-
ever, it would have entailed a much heavier loss
upon the State than was the case.

And now, as to the saving to the State through 236
the retirement of the debts under the Acts of 1869
and 1870.

What I meant to say was this, that there was
scarcely a road in the State which would have been
able to resume and maintain the payments to the
sinking fund when it became payable in 1870, and
that as a consequence of their failure to do so nearly

every road would have gone into the hands of a receiver and been sold out, or else run at a continuous loss to the State.

Take for instance the East Tennessee, Va. & Ga. Railroad; at the date it made its settlement with the State it owed the State $4,117,000, and the Government had a claim upon it for about $637,000, which latter was claimed to be a paramount lien to all others, and to obtain which the War Department had appointed a military receiver, who had only been temporarily restrained from taking possession through the intervention of the Circuit Court of the United States; the Government claim was settled under an act of Congress a year or two subsequent for about $200,000, mainly in ten and fifteen year bonds of the road, and the State debt was settled at a saving to the company of about $1,300,000, showing a total reduction of the indebtedness on which interest had to be paid of about: . . . . . $1,700,000.

The road has since been run with the greatest economy, and the net earnings have only sufficed to pay the interest on the reduced indebtedness, and to pay six dividends of three per cent. on less than two millions of dollars, amounting in the aggregate to $354,289.32

While the four per cent. sinking fund on the $4,117,000 for the nine years now elapsed is 1,482,120,

And the six per cent. interest on the $1,300,000 saved in the retirement of the State debt amounts to . . 702,000

Being a total of . . . . $2,184,120.

These two amounts being in excess of the amount of dividends paid by the sum of $1,829,830,68

Which amount it would have been utterly impossible for the road to pay; hence, in all probability,

it would have gone into the hands of a receiver and 241
been sold out.

From an intimate knowledge of the condition of the Memphis and Charleston Railroad Co., I can state truly that that road would have been sold out but for the forbearance on the part of the State granted to the management of that company in order to give it time to retire its debt, which it was finally enabled to do mainly through parties that were interested in the welfare of the company, and who supplied the money in order to save themselves 242
as far as possible from the great loss that would have been entailed upon them by letting the road pass into the hands of the State.

At the time that the lien held by the State was purchased from the State by A. Iselin & Co., that road was liable to have passed into the hands of a receiver for default in the payment of sinking fund and interest, and had such been the case I do not believe the State would have realized two-thirds of its debt. 243

The Mobile & Ohio Railroad was also in default on account of the sinking fund and interest, and has since failed to meet its interest on the substitution bonds and has been reorganized at a heavy loss to the holders.

The Nashville and Decatur road was also in default, and would have been sold out had not it succeeded in procuring parties to retire its debt under the acts of 1869-70, and would under these circumstances have brought probably not two-thirds of the 244
debt due to the State.

And this is true of nearly every so-called solvent road that paid its debt to the State, except the Nashville and Chattanooga, and Louisville and Nashville roads; not a single road other than these would have been able to have made their annual interest and sinking fund payment, that I now know

245 of. Hence all would have gone into the hands of receivers and been sold out, or else run at a loss to the State. This fact, I think, was fully realized by a large number, if not all, the holders of Tennessee State bonds, who, so far as I know, without a single exception, urged that this policy of retiring the debts due the State from the railroads should be carried into effect.

In the case of the Memphis and Charleston Railroad, Mr. Peter Geddes repeatedly urged me as its
246 president, to retire, or procure some one to retire the debt due to the State from that Company, and on one occasion he came to my office and made inquiry as to how I was getting along in the matter of retiring the debt of that Company to the State. I told him that the Company was ready to retire its debt as early as it could possibly procure means with which to do so; that it had made arrangements with some parties to buy and carry some of the bonds, with a view of either retiring its debts on its
247 own account, or else getting some of the parties to buy the lien from the State, who could give the Company more favorable terms of payment than the State could; that under such an arrangement, about three hundred thousand dollars of Tennessee bonds had been procured, and that as he was a holder of a large amount of such bonds, both for himself and Mr. George Smith, that to secure the needed amount, I would buy his bonds. He declined to sell his bonds, but insisted that I should go
248 forward and retire the debt at once, giving as his reason for urging me to retire the debt, that until that was done, I and my party could never be efficient co-workers in the restoration of the State's credit. The debt of that Company was purchased from the State by A. Iselin or A. Iselin & Co., thereby retiring the debt to the State in accordance with the wishes of Mr. Peter Geddes, (as fully ex-

pressed to me and particularly urged by him on the 249
occasion to which I allude), and of every other bondholder, so far as I know and believe, without a single exception.

I give it as my deliberate judgment, having perfect familiarity with the condition of nearly every railroad in the State, that the State of Tennessee is from four to six millions of dollars better off than it would have been if the Retiring Acts and the Acts for the sale of the roads had not been passed.

260 x Q. How long have you known Mr. Iselin, 250
and what were the circumstances under which you made his acquaintance?

A. In March or April, 1870, I made application to the New York Guaranty and Indemnity Company to supply the money with which to retire the debt of East Tennessee, Virginia and Georgia Railroad Company to the State, and the President of that company convened a meeting of the board of directors, in order that I might submit the application and make a statement of the con- 251
dition of the roads, for the decision of the board.

Mr. Iselin was present at that meeting. It was in the early part of April, 1870, as I now remember. I saw him there for the first time in my life, so far as I know, but was not then presented to him.

The Guaranty and Indemnity Company declined to loan the money, whereupon it was procured from the Fourth National Bank.

Early in the succeeding month of May, Mr. 252
Odier, of firm of Lombard, Odier & Company of Geneva, Switzerland, arrived in America, and Mr. Iselin having heard my statement respecting the wish of our company to retire its debt to the State presented the subject to Mr. Odier, and asked an introduction to me through the President of the New York Guaranty and Indemnity Company,

253 which was granted, and about the 12th or 15th of May, I became for the first time personally acquainted with Mr. Iselin, when we took up the subject of negotiating for the bonds, which it was proposed to issue for the purpose of raising money to retire the debt to the State. And out of this transaction grew my acquaintance and subsequent operations with Mr. Iselin.

I herewith present the account of the Mobile & Ohio Railroad called for in the examination in
254 chief.

(Marked Complainant's Exhibit No. 8.—W. H. D. L., Spl. Ex'r.)

(Counsel for defendants object to the foregoing answer and Exhibit as incompetent and irrelevant in these cases.)

Adjourned to October 24th, 1879, at 1 P. M.

255 NEW YORK, October 24th, 1879, 1 P. M.

Present—Counsel as before.

R. T. WILSON resumes:

261 x Q. In your letter to Mr. Terry you say: "That so long as the railroads were indebted to the State the temptation to them to so influence legislation, as to cause a default in the payment of coupons in order to buy them up at a discount and pay them over to the State." Did you mean to
256 say that the railroad men had influenced legislation in this way?

A. I did not. I merely meant to say, that it offered a temptation to do so.

Nov. 12th, 1879.

And further deponent saith not.

R. T. WILSON.

Subscribed and sworn to before me, this 12th day of November, A. D., 1879. } 257

WILLIAM H. DE LANCEY,
[L. S.] Notary Public,
Westchester County.

Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

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Certificate.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
State and County of New York,

I, WILLIAM H. DE LANCEY, a Notary Public, in and for the State and County aforesaid, and duly commissioned and qualified under the laws of the United States to take depositions for use in the Circuit Courts of the United States, do hereby 259 certify that the reason for taking the foregoing deposition is, and the fact is that the testimony of the said witness is material and necessary for the complainant in the cause in the caption of said deposition named, and that the said witness lives, and did live at the time of taking said deposition in the City and County of New York, the same being at a greater distance than one hundred miles from the City of Memphis, where the Court, at which it is expected the said cause will be tried, was appointed 260 to be held, to-wit: more than five hundred miles therefrom.

I further certify that the said witness was examined, and cross-examined by the counsel for the respective parties to the cause name in the caption hereto.

I further certify that on the 9th day of September, the 13th, 14th, 23d, 24th days of October and

261 the 12th day of November, A. D. 1879, I was attended at my office, No. 52 Broadway, in the City, County and State of New York, in the Southern District of New York aforesaid by Edward L. Andrews, Esq., solicitor, and of counsel for the complainants, W. Y. C. Humes, Esq., solicitor, and of counsel for defendants, and by R. T. Wilson, the witness, who was of sound mind and of lawful age, and the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole
262 truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and from his statements, and after carefully reading the same to witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purposes of annexing the several Exhibits, and of sealing up and directing the same with this certificate of the reasons aforesaid for taking the said deposition, with my own hand, to the Court for which the same was
263 taken.

And I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In witness whereof, I have hereunto set my hand and seal this 31st day of December, in the year of our Lord, one thousand eight hundred and
264 seventy-nine, and of the Independence of the United States the one hundred and fourth.

WILLIAM H. DELANCEY,
[L. S.] Notary Public,
Westchester County.

Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

COMPLAINANT'S EXHIBIT No. 1. 265

W. H. D. L.,—Spl. Exr.

OPINION OF CHARLES TRACY, ESQ.

The Tennessee Statute of 1852, Ch. 151, embraced in its provisions the Mobile and Ohio Railroad Company (§ 10).

That statute fixed upon the road and property of the company a lien in nature of a mortgage in favor of the state, to the amount of state bonds advanced 266 to the company (§ 3, § 4); and it made it unlawful for the company to create any lien or incumbrance which should have priority over, or come in conflict with the state's lien; and the state's lien or mortgage was declared to have priority over all other claims existing, or to exist, against the company (§ 4).

The 12th section of that act is as follows:

"Be it enacted, that the state of Tennessee
"expressly reserves the right to enact by the 267
"Legislature thereof, hereafter, all such laws
"as may be deemed necessary to protect the
"interest of the state, and to secure the state
"against loss, in consequence of the issuance
"of bonds, under the provisions of this act;
"but in such manner as not to impair the
"vested rights of the stockholders of the com-
"panies."

The company subsequently made two mortgages, 268 or deeds of trust, the first of which expressly saves and reserves the rights and liens in favor of the state, and the second declares that it is subject to the lien of the first, and also that it should not interfere with the state's lien.

The act of 1869, c. 38, was passed in pursuance of the reserved power of legislation mentioned in sec-

269 tion 10 of the act of 1852. This act of 1869 provides for relieving the state from a part of its debts by a scheme for retiring the state bonds, and transferring the state's first lien to new bonds made by the company, and certified by the comptroller, and which shall be a first lien on the road and property. The provisions of the act of 1869 in this regard are clearly sanctioned by the act of 1852.

The bondholders under the first and second mortgages lose nothing by this subrogation of the
270 holders of the new bonds to the prior lien of the state, and have not at law or in equity any right to dispute the priority of such new bonds.

The reservation of the act of 1852 is made in ample terms. It saves a right of enactment to protect the interest of the state, and to secure the state against loss by reason of issuing the bonds; and it constitutes the Legislature the judges of what enactments may be deemed necessary for such purposes. The Legislature having deemed it necessary
271 to pass the act of 1869 for the protection of this interest of the state, no question of its competency or validity is admissible.

Nor is there anything in the act of 1869 which does not lie clearly within the limits of the reserved power of legislation. It does not affect the first and second mortgages. It continues the lien of the state on the same property and to the same amount while it changes the payees or creditors to be protected by the lien. There is no satisfaction
272 or extinguishment.

The sums to be paid to the state are not paid, but are made payable to the holders of the new bonds. The state ceases to be a creditor, and the new bondholders become creditors in its place. The company's obligation or debt, with the lien or charge for payment, continue to the new creditors.

The act of 1869, therefore, is clearly valid, and

the new bonds issued and certified as required by 273
it, have a first lien and a priority over the first and second mortgage bonds.

The preamble and resolutions adopted by the Board of Directors, May 25th, 1871, and the indenture executed by the company and Messrs. Duncan, Iselin and Wilson, dated July 1st, 1871, are in proper form for carrying the proposed arrangment into effect, and giving to the holders of the new bonds the benefit of a first lien on the company's property, through the parties named as 274
trustees.

(Signed) CHARLES TRACY,
50 Wall st., New York.

July 20, 1871.

COMPLAINANT'S EXHIBIT No. 2.

W. H. D. L.,—Spl. Ex'r.

Memorandum of an agreement made this second 275
day of May, A. D. 1879, at the City of New York, between the East Tennessee, Virginia and Georgia Railroad Company and R. T. Wilson, parties of the first part, and The Fourth National Bank of the City of New York, party of the second part.

Whereas, The East Tennessee, Virginia and Georgia Railroad Company is desirous of effecting the negotiation of its certain new or mortgage 276
bonds issued or to be issued by it, in pursuance of authority duly given to it, which bonds upon the surrender to the State of Tennessee of its State bonds in due payment of certain loans or aid heretofore given to the corporations, now duly consolidated into the aforesaid railroad company, are to become a lien *pro rata* in amount and of equal

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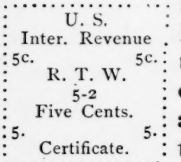
validity with the unretired part of the State indebtedness upon the said railroad, the whole of said indebtedness being about three millions nine hundred and fifteen thousand dollars ($3,915,000), and the said railroad is also desirous of providing any funds which it may become necessary to employ in effecting the surrender of the said State bonds, and the substitution of its said railroad mortgage bonds
278 therefor under such authority.

And whereas, The Fourth National Bank has consented upon the conditions hereinafter stated to procure such negotiation of the said railroad mortgage bonds, and to procure certain advances upon the representation of R. T. Wilson, a director of the said railroad company, that the said company may lawfully make this agreeement and upon his individual promise to guaranty to the said bank the prompt and full repayment by the said company of
279 all advances made to it.

Now, therefore, in consideration of the premises and of the mutual covenants hereof, it is agreed :

First.—The said railroad company shall appoint and does hereby appoint the said Fourth National Bank its sole agent to receive and surrender to the State of Tennessee in pursuance of the authority above recited, State bonds
280 

to the amount of about three millions nine hundred and fifteen thousand dollars ($3,915,000). and the said railroad company will deposit with the said bank the whole issue of their new or railroad mortgage bonds issued or to be issued, as hereinbefore described, such appointment to be irrevocable until the close of the transaction contemplated hereby.

Second.—The said bank, as rapidly as the said 281
railroad bonds shall be fully and properly substituted for the said State bonds so surrendered, shall procure the negotiation and the sale of the same as speedily as possible, at such prices as may be agreed upon by the said bank and railroad company. The said bank shall receive for its said services in securing such negotiation, a commission of two and one-half per cent. upon the par value of such bonds, except that when other parties shall sell any of the said bonds, then on such sales the said bank shall 282
receive one and one-quarter per cent. commission, and the party so selling the bonds, one and one-quarter per cent. commission.

In all cases, the expense of all advertising and printing as required, shall be at the expense of the said railroad company.

U. S. Inter. Revenue. 5c. R. T. W. 5c. 5-2. Five Cents. 5. 5. Certificate.

Third.—The said bank shall procure advances of funds to be made to the said railroad company, to an 283
amount not exceeding what may be requiring to purchase three millions nine hundred and fifteen thousand dollars ($3,915,000) of Tennessee State bonds; provided that the said company shall pledge as security for such advances, the said State bonds, or its before-described new mortgage railroad bonds when substituted for State bonds, and provided that such advances never need exceed fifty per centum of the par value of the bonds so pledged.

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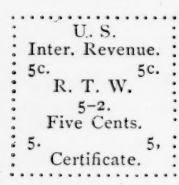
The said bank shall be entitled to charge for all advances made to the said railroad company a commission equal to five per centum per annum on the amount thereof in addition to seven per centum interest, to be paid thereon by the said railroad company.

And such interest and commission shall be paid on 1st July, 1870, and quarterly thereafter.

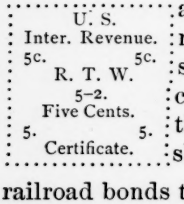
285 The said company hereby authorizes the said bank to sell the said securities so to be pledged, and all substituted securities in case of non-payment of such advances at maturity, at public sale without notice, and to purchase the said securities at said sale.



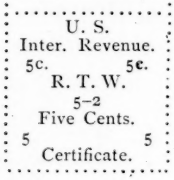
Fourth.—The said bank shall from time to time
286 apply all the net proceeds of the aforesaid railroad bonds, as sold as above provided, to the repayment of the advances so as above made to the said railroad company, with interest and commissions so far as may be required for such purpose.

Fifth.—All advances so made and not sooner paid shall become due and payable on the first day of May, 1871. If on or before that time sufficient shall have been realized from the sale of the said
287 railroad bonds to repay all advances made, and all indebtedness to the said bank, then the said company may withdraw the balance of their bonds from the said bank.

If, however, not sufficient shall then have been realized to repay such advances, and all indebtedness to the said bank, then the said railroad company shall be bound to pay the balance against it at once, unless a satisfactory arrangement for the continuance of this or a
288 similar agreement is made. But in case no such agreement is made then the payment of such balance, if made, shall not entitle such company to the railroad bonds then unsold until it shall have paid to the said bank a commission of one and one-quarter per cent. upon an amount of such bonds at par, equal to the said balance against such Company.



Sixth.—R. T. Wilson, in consideration that the 289
said Fourth National Bank enters into this agreement at his request, and upon his aforesaid representations, hereby guarantees to the said bank that the said East Tennessee, Virginia and Georgia Railroad Company will promptly pay to the said bank



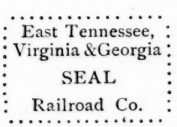
all its indebtedness arising under the arrangement contemplated by this agreement, and hereby waiving all defenses, if any, which he or the said railroad company might have 290
against any such payment.

In witness whereof the said corporations

parties hereto have caused these presents to be executed by their respective presidents, and their respective corporate seals to be hereunto affixed, and the said R. T. Wilson has hereunto set his hand and seal the day and year 291
first above written.

EAST TENN., VA. & GA. R. R. CO.,
By THOMAS H. CALLAWAY,
Pres't.

In the presence of
JOE CALLAWAY.
E. S. DELANY.



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JAMES G. MITCHELL,
Sec. and Treas.

FOURTH NATIONAL BANK OF THE CITY OF NEW YORK,
By P. C. CALHOUN, Pr.
R. T. WILSON.

960

293 The East Tennessee, Virginia and Georgia Railroad Company has fully paid and discharged all its liabilities to the Fourth National Bank of New York, growing out of transactions made under the foregoing contract.

New York, April 17th, 1871.

P. C. CALHOUN, Pr.

STATE OF TENNESSEE, }
Bradley County. } ss.:

On this 4th day of May, in the year 1870, before
294 me, Edwin S. DeLany, a notary public, personally came Thos. H. Callaway, the President of the East Tennessee, Virginia and Georgia Railroad Company, of the town of Cleveland, in the State of Tennessee, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in Cleveland, Bradley County, Tennessee: that he was the president of the said East Tennessee, Virginia and Georgia Railroad Company; that he new the corporate seal of the said company; that the seal af-
295 fixed to the within instrument was such corporate seal; that it was affixed by authority of the Board of Directors of said company, and that he signed his name thereto as such President, by the like authority.

Witness my hand and official seal at Cleveland, Tennessee, date above written.

[SEAL.]

EDWIN S. DELANY,
Notary Public,
296 Bradley County,
Tennessee.

Endorsed:

Dated 2d May, 1870. The East Tennessee, Virginia and Georgia Railroad Company, R. T. Wilson, and the Fourth National Bank of the city of New York. Agreement.

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COMPLAINANT'S EXHIBIT NO. 3. 297

W. H. D. L., *Special Examiner.*

R. T. WILSON & Co.,

BANKERS AND COMMISSION MERCHANTS,

44 Broad Street.

R. T. WILSON,
J. M. JOHNSON,
B. F. WILSON, 298
W. P. ORME,
L. L. CALLAWAY,

NEW YORK, April 15th, 1870.

Captain Joseph Jaques, V. P. E. Tenn., Va. and Ga., R. R. Co.

DEAR SIR;—We propose the following:

1st.—To furnish bonds and coupons of the State of Tennessee to you with which to pay your debt 299 to the State, to the extent of three millions of dollars, at fifty-five cents on the dollar in cash. You are to give us the option for three months, of furnishing the balance of the debt you owe the State, at the same price, accrued interest to be counted at the same price.

2nd. We will undertake as financial agents of the road, to negotiate for the necessary money to carry out this contract and to sell the bonds to reimburse the same, employing such assistance at the expense 300 of the road as may in our discretion be necessary, leaving our compensation to be fixed by the road after the transaction is concluded.

3rd. If we are continued as the financial agents of the company and no providential interference presents or interferes, then we guarantee that your debt of say $3,915,000 to the extent retired shall be

done at not exceeding the rate of three millions of your company bonds for the whole.

Yours truly,

R. T. WILSON & CO.

I certify that the above is a true copy.

S. S. PALMER.

CLEVELAND, TENN., April 21, 1870.

MESSRS. R. T. WILSON & CO.,

44 Broad Street, New York.

GENTLEMEN:

Your offer to sell bonds to this road, made through its Vice President, Capt. Joseph Jaques, bearing date of the 15th instant, is received, and I have telegraphed our acceptance of your proposition, which acceptance I now confirm.

You will now proceed to negotiate for the necessary money to carry out your proposition, and you are hereby authorized to hypothecate the State bonds for money so raised; also, to pledge this company's credit for the same, and whenever the extent of your ability to deliver State bonds justifies your moving in the matter of surrendering State bonds of the State of Tennessee in manner as the acts of February 25, 1869, and acts amendatory thereto provides, then you are hereby authorized to surrender the same to the Comptroller of the State of Tennessee or to his agent in New York.

With a view to this action on your part this company hereby authorizes you to use of its mortgage bonds to the extent which you may surrender State bonds, and when you surrender State bonds you will cause the certification of the Comptroller of the State of Tennessee to be affixed on our mortgage or company bonds, in manner as the law provides for, and when so certified you are authorized and directed to hypothecate them against money borrowed until

such time as you can sell them at such prices as this company may from time to time authorize. 305

THE EAST TENNESSEE, VIRGINIA & GEO. R. R. Co.,
By THOS. H. CALLOWAY,
Pres't.

April 20, 1870.

THOS. H. CALLOWAY, Pres't,
Cleveland, Tenn.,

The proposition won't be made before to-morrow, if then; meantime I want to know if you accept on condition that you can control the price of your bonds for one year. 306

R. T. WILSON,
F. Agent.

April 20, 1870.

THOS. H. CALLOWAY, Pres't,
Cleveland, Tenn.

You know we can't issue only as we surrender, and therefore could not make any of the bonds available as a means on which to raise money. They will insist on having control of all until enough are sold to pay advances, mainly, as they say, to avoid competition in selling. I believe this can be satisfactorily arranged either with the present or other parties. Also that we can control the price of our bonds for one year. 307

R. T. WILSON,
F. Agent. 308

CLEVELAND, TENN., April 20th, 1870.

R. T. WILSON,
44 Broad Street.

I am willing to accept your proposition, provided the whole issue of bonds are not to be tied up so that

309 in case we may need money for any other purpose, that we will have something to raise it on, and we must have the right to price our bonds.

THOMAS H. CALLOWAY,
Pres't.

CLEVELAND, TENN., April 21, 1870.

R. T. WILSON,
44 Broad Street,

I accept your proposition.

310 THOMAS H. CALLOWAY,
Pres't.

NEW YORK, May 25, 1870.

CAPT. J. JAQUES,
V. P. East Tenn. and Va. R. R., Knoxville, Tenn.

DEAR SIR:—Haven't received the promised letter after seeing Mr. Calloway, but we suppose that you have agreed to issue a new bond, and hence we are having one prepared to be ready by the 25th in-
311 stant.

We now give notice that we will sell your road under our option, enough more bonds that we have heretofore agreed to supply to pay off your State debt with.

Yours truly,
(Signed) R. T. WILSON & CO.

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COMPLAINANT'S EXHIBIT No. 4.—W. H. D. L., *Spl. Exr.*

NEW YORK, September 30, 1870.

BOND RETIRING ACCOUNT. No. 1.

E. T., Va. and Ga. R. R., in account current with R. T. WILSON & Co.

DR. 1870.		AMOUNT.	DAYS.	INT.
July 1,	To Revenue Stamps on 3,000,000 bonds at 1.25 per 1,000 ...	3,150	91	95 55
Sep. 30,	" Interest at 12 % on 33,933.33 from 30 Sep. to 31 Oct., in order to bring int. acct. to 30 Sep., say 31 days			350 64
30,	" Balance int. acct..			23,202 30
30,	" " down to credit in cash 30 Sept., 1870.....	1,139,750 55		
		1,142,900 55		23,648 49

E. & O. E.

316 315

1870.		AMOUNT.	DAYS.	INT.
July 1,	By 500,000 bonds, 82½ less com. 2½,	400,000	91	12,133 40
25,	100,000 "	80,000	67	1,786 66
25,	accrued interest.....	566 67	67	12 66
26,	150,000.....	120,000	66	2,640
26,	accrued interest	729 20	66	16 04
27,	150,000.....	120,000	65	2,600
27,	accrued interest	758 30	65	16 42
28,	100,000.....	80,000	64	1,706 66
28,	accrued interest.....	525	64	11 20
Aug. 3,	150,000	120,000	58	2,320
3,	accrued interest.....	962 50	58	18 62
Sep. 2,	17,000.....	13,600	28	126 94
2,	accrued interest.....	204 94	28	1 91
24,	133,000.....	106,400	6	212 80
24,	accrued interest.....	2,172 33	6	4 34
27.	50,000.....	40,000	3	40
27,	accrued interest.....	845 98	3	84
Oct. 31,	40,000	32,000		
31,	accrued interest.....	933 33		
Sep. 30,	Interest at 12%	23,302 30		
		1,142,900 55		23,648 49
Sep. 30,	By balance down.....	1,139,750 55		

314 313

79

965

320 319 318 317

Copy.

NEW YORK, December 31, 1870.

BOND RETIRING ACCOUNT No. 2.

East Tenn., Va. and Ga. R. R. Co. in account current with R. T. WILSON & Co.

DR.				CR.			
1870.		AMOUNT,	INTEREST.	1870.	AMOUNT.	DAYS.	INTEREST.
Dec. 31,	To balance interest acct.....		34,952 36	Sept. 30,	By balance rendered.....1,139,750 55	92	34,952 36
31,	" down to your credit.	1,174,702 91		Dec. 31,	Interest 12% per annum.. 34,952 36		
		1,174,702 91	34,952 36		1,174,702 91		34,952 36
E. & O. E.				Dec. 31,	By balance.....1,174,702 91		

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NEW YORK, March 31st, 1871.

BOND RETIRING ACCOUNT No. 3.

East Tenn., Va. and Ga. R. R., in account current with R. T. WILSON & Co.

DR. DATE. 1871.		AMOUNT.	DAYS.	INT.
Mar. 31,	To balance interest acct. . . .			568 78
31,	" down to your Cr. transferr'd to general acct. of E. Tenn., Va. and Ga. R. R. Co. . .	41,025 73		
		41,025 73		568 78

CR. DATE. 1871.			AMOUNT.	DAYS.	INT.
Feb. 10,	By 20,000 bonds 82½, less com. 2½		16,000	49	261 34
10,		accrued interest.	155 56	49	2 53
14,	20,000	" 2½	16,000	45	240 00
14,		accrued interest.	171 11	45	2 56
Mar. 8,	10,000	" 2½	8,000	23	61 33
8,		accrued interest.	130 28	23	1 00
31,	Interest, 12%.		568 78		
			41,025 73		568 78

E. & O. E.

81

394 393 392 391

967

Statement of the retirement of the debt due the State of Tennessee by the East Tennessee, Virginia and Georgia Railroad Company, effected by R. T. Wilson & Co., New York.

1870.				1870.			
July 1,	To total indebtedness cancelled.....		$4,117,761 10	July 1,	By January, 1870, interest included in the cancelled debt, same paid and in the general account of the road as rendered.....	$80,909 48	
					" Amount paid in currency to balance and charged in general account.....	11 10	
					" Balance to be paid in Tenn. Bonds at 55 per cent., as below.....	4,036,840 52	
			$4,117,761 10				$4,117,761 10
April 15,	To 3,117,750 Tenn. new at 55 per cent.....	$1,714,762 50		April 15,	By Interest on $2,860,320.85 at 6 per cent. the date of first contract to deliver bonds, say $35,754 at 55 per cent....	$19,664 70	
May 25,	" 919,090.52 " "	505,499 79		July 1,	" Interest at 1 per cent. per month on same	498 18	
July 1,	" Interest at 1 per cent. per month from 15th April to date on $1,714,762.50, say 76 days.....	43,440 74		May 25,	" Interest on $843,302.56 at 6 per cent., the date of second contract to deliver bonds, say $4,919 at 55 per cent.....	2,705 45	
" 1,	" Interest at 1 per cent. per month from 25th April to date on $505,499.79, say 36 days.....	6,606 00		July 1,	" Interest at 1 per cent. per month on same.....	32 46	
				April 15,	" 29,000 old bonds taken in this account at 55 per cent.....	5,950 00	
				"	" 9 per cent. interest on same at 55 per cent.....	1,435 50	
				"	" 9 coupons sent us at 55 per cent.....	148 50	
				July 1,	" Interest on same at 1 per cent. per month	444 18	
				"	" Interest at 5 per cent. on average of your general account from 15 April.....	1,714 64	
				"	" Balance charged to your general account as cash this day.....	2,227,715 42	
			$2,270,309 03				$2,270,309 03

83

Statement of East Tennessee, Va. & Ga. R. R. 329
7 per cent. bonds sold.

DATE.	QUANTITY.	PRICE.	AMOUNT.	
1871.	M.			
Mar. 25,	200,000	82½ and Int.	$168,266 67	
31,	10	"	8,425 00	
April 3,	10	"	8,428 89	
8,	10	"	8,438 61	
10,	65	"	54,876 25	
11,	65	"	54,888 89	
15,	75	"	63,391 67	
18,	75	"	63,435 42	330
19,	100	"	84,600 00	
20,	50	"	42,309 72	
22,	300	"	253,975 00	
25,	90	"	76,245 00	
25,	10	"	8,471 67	
Dec. 5,	20	93½ and Int.	18,700 00	
1872.				
Jany. 13,	3	90 "	2,700 00	
15,	10	90 "	9,027 22	
19,	100	89 "	89,000 00	
25,	20	90 "	18,092 05	
Feby. 8,	5	90 "	4,536 44	
12,	10	90 "	9,080 55	
21,	65	90 "	59,135 75	
April 26,	100	90 "	92,236 11	
Dec. 11,	17	89 "	15,662 19	331
12,	16	89 "	14,744 00	
1873.				
Jany. 8,	10	89 "	8,913 43	
17,	5	89 "	4,465 34	
27,	6	89 "	5,369 92	
Feby. 5,	2	89 "	1,793 42	
7,	2	89 "	1,794 19	
8,	10	89 "	8,972 87	
11,	5	89 "	4,489 31	
Mar. 1,	10	89 "	9,013 15	
14,	5	89 "	4,519 04	
29,	7	89 "	6,346 80	
April 4,	12	89 "	10,894 03	
May 28,	5	90 "	4,640 96	
29,	2	90 "	1,856 77	332
31,	5	89 "	4,593 83	
June 7,	5	89 "	4,600 55	
July 11,	8	89 "	7,135 35	
16,	5	89 "	4,464 38	
23,	10	90 "	9,042 19	
1877.				
April 21,	3	92 "	2,760 00	
May 18,	1	92 "	920 00	
July 17,	1	91 "	910 00	
Aug. 1,	20	90 "	18,000 00	
9,	1	91 "	910 00	

	DATE.	QUANTITY. M.	PRICE.	AMOUNT.
	Oct. 22,	12,000	90 and Int.	$11,060 05
	Nov. 3,	8	90 "	7,391 78
	14,	8	90 "	7,408 66
	16,	20	90 "	18,529 32
	19,	33	90 "	30,592 36
				$1,430,054 80
	Less 2½ per cent. com. charged on— 1,393 bonds.....			34,825 00
	1,647,000.....			$1,395,229 80
	1,390,000.....		82½ "	1,139,750 55
	50,000.....		"	41,025 73
	3,087,000			$2,576,006 08
	Conditional bonus received on first sales.....			4,500 00
				$21,580,506 08

Average per bond..... ....$835.92 7-10

COMPLAINANT'S EXHIBIT No. 5.

W. H. D. L., Spl. Ex'r.

NEW YORK, May 13th, 1870.

MESS. A. ISELIN & Co.:

Gentlemen:

I now beg to confirm in writing the verbal agreement had with you this day, which I understand to be as follows:

1. The East Tennessee, Virginia and Georgia Railroad Company is to pay off the debt due the State of Tennessee, for the loan of the bonds of said State in manner as the law provides, by surrendering State bonds to the Comptroller or his agent.

2. The said railroad company is to issue a mortgage bond, which is to take the place of the lien

held by the State, for an amount not exceeding 337
three millions five hundred thousand dollars ($3,500,000) principal and interest of said bonds to be payable in currency, and to be in denominations of one thousand dollars bearing seven per cent. per annum interest, with coupons therefor attached, payable semi-annually, and running to maturity within twenty, twenty-five or thirty years, as the road may elect.

3. You are to purchase of the said railroad 338
bonds, and by the acceptance of this do contract for and purchase five hundred thousand dollars at eighty-two and a half cents on the dollar, and accrued interest. This purchase secures to you the option of purchasing fifteen hundred thousand more of said bonds at the same price, which option is to run until the thirty-first day of next July.

4. The five hundred thousand dollars which you have purchased to be delivered to you by the road
so soon as the road can prepare them and get the 339
State debt paid, which will probably be by the first day of July next, or soon thereafter, but not later than the thirty-first day of that month, and when delivered they are to be paid for and in like manner, in case of further purchases which you may make on your option.

5. Of the issue of said railroad bonds the road reserves and million dollars and hereby agrees not
to sell them without your consent before the ex- 340
piration of six months and of the remaining amount, say five hundred thousand dollars, R. T. Wilson & Co., of this city, and such parties as they may associate with them, have the option to purchase the same, at the same price and for the same time which is given you on your option, with the further understanding that the bonds so to be pur-

chased by R. T. Wilson & Co. are to be offered by you, for sale in Europe, during the time your option runs, in conjunction with your bonds, upon such terms and conditions between you and them as may be agreed upon, it being understood that the terms between you and R. T. Wilson & Co. do not apply to or effect the road.

6. This contract not to be binding on you until you examine the road, which you are to do next week, and then report whether you accept or decline it.

Yours truly,

R. T. WILSON,
for the East Tenn., Virginia
& Ga. R. R. Co.

A. ISELIN & Co.,
P. O. Box 910, New York.

NEW YORK, May 13th, 1870.

R. T. WILSON, Esq., Financial Agent,
East Tennessee, Virginia & Georgia R. R. Co.

DEAR SIR: We are in receipt of your favor of to-day, which is in conformity with our verbal agreement according to which we bind ourselves to take ($500,000), five hundred thousand dollars in bonds of the East Tennessee, Virginia & Georgia R. R. at 82½, eighty-two and a half cents on the dollar and interest, on condition that you give us the option of taking fifteen hundred thousand ($1,500,000), more of said bonds at same price.

These bonds to be part of an issue of $3,500,000, three million five hundred thousand dollars, secured by a first mortgage on the railroad, the Company

having first satisfied the State lien according to law. 345

This contract not to be binding until we shall have examined the road and declared our intention of accepting or declining.

Yours truly,
A. ISELIN & CO.

Endorsed,

"A. ISELIN & Co.
Accepted Contract 346
May 13th, 1870."

A. ISELIN & Co.,
P. O. Box 910, New York.

NEW YORK, May 13th, 1870.

MESSRS. R. T. WILSON & Co.,
Present.

Gentlemen: We are in receipt of your favor of to-day, in accordance with which we are to offer for 347 sale in connection with the bonds of the East Tennessee, Virginia & Georgia R. R. Co., which we have contracted, or for which we have an option, $500,000, five hundred thousand dollars of said bonds, on which you have an option on the following terms:

1st. The $500,000 which we are to purchase of the Company are to be first sold, then sales to be made for our joint account, pro rata to our respective interests and at such prices as we may fix above what 348 the bonds cost you with interest and charges.

Our charge is to be ½%, one half per cent. for drawing exchange against bonds sold.

The bankers in Europe are to charge 1½%, one and half per cent. commission for selling bonds,

Yours truly,
A. ISELIN & Co.

349 "Copy"

NEW YORK, May 27th, 1870.

MESSRS. ADRIAN ISELIN & Co.

Gentlemen: Referring to the letter of R. T. Wilson, Financial Agent of the East Tennessee, Virginia & Georgia Railroad Company, addressed to you under date of the 13th instant, we beg to say that we have forwarded a copy of it to Knoxville, Tennessee, for confirmation by said road, and expect
350 its return in due course of mail, with the official signature of the proper officers thereto affixed.

In the meantime we hereby guarantee the performance or acceptance by the road of the contract made through its Financial Agent previously alluded to.

Yours truly,

(Signed) R. T. WILSON & CO.

A. ISELIN & Co.,
P. O. Box 910, New York.

351

NEW YORK, May 27, 1870.

R. T. WILSON, Esq., Agent, &c.,

East Tennessee, Virginia & Georgia R. R. Co.

352 Dear Sir: Having examined your road as contemplated in our letter, May 13th, we hereby express our satisfaction therewith and agree to take the bonds as therein provided.

Yours respectfully,
A. ISELIN & CO.

A. ISELIN & Co.,
P. O. Box 910, New York,

NEW YORK, May 28th, 1870. 353

R. T. WILSON, Esq., Agent, &c.,
East Tennessee, Virginia & Georgia R. R.:

DEAR SIR: We omitted in our letter of yesterday to mention that our contract of May 13th had been modified to the extent that $500,000, five hundred thousand dollars, of the first mortgage bonds of the East Tennessee, Virginia & Georgia R. R. are to be reserved and not issued until the claim of the United States Government against the company 354 shall have been settled or paid.

By confirming this you will oblige.

Yours respectfully,
A. ISELIN & CO.

A. ISELIN & Co.,
P. O. Box 910, New York.

NEW YORK, July 28th, 1870.

R. T. WILSON, Esq., Agent, 355
East Tennessee, Va. & Ga. R. R. Co.:

DEAR SIR: We hereby propose to you to buy of the $1,500,000, fifteen hundred thousand dollars, East Tennessee, Va. & Ga. R. R. Co. first mortgage bonds remaining to be sold—

$150,000 three days after the acceptance of this our proposition, at 82½ and interest;

$150,000 within 60 days, at 82½ and interest, on condition that you give us the option to purchase 356

$900,000 of the remainder at same price for six months from date, should war in Europe continue for that period, or should peace have been made before six months, for sixty days after the declaration of peace.

Yours respectfully,
A. ISELIN & CO.

357 "Copy." NEW YORK, Aug. 2, 1870.

Messrs. A. ISELIN & Co.:

GENTLEMEN: Yours of the 28th ultimo, proposing to purchase three hundred thousand dollars of the bonds of this company (1st mortgage 7%), is received.

I hereby accept the proposition therein contained, and give the option on nine hundred thousand dollars more of the bonds for the time, as
358 stated by you.

Yours truly,

THE EAST TENNESSEE, VA. & GA. R. R. CO.
By R. T. WILSON,
Financial Agent.

A. ISELIN & Co.,
P. O. Box 910, New York.

NEW YORK, 17th March, 1871.

359 Mess. R. T. WILSON & Co.,

Financial Agents of East Tennessee and Virginia R. R.:

GENTLEMEN: We confirm the verbal arrangement made with you in relation to the unsold bonds of the East Tennessee and Virginia R. R. Co. We agree to purchase from you on the 2d May, or sooner, two hundred and fifty thousand dollars of bonds ($250,000), including the $50,000 already pur-
360 chased at 82½, and interest, on condition of your giving us the option for four months from date of eight hundred and fifty thousand dollars more at the same price. Should we call for the bonds before the 2d May, you are to pay us the difference of interest the bonds bear and 12% per annum, the rate at which our loans to you have been made up to that date.

We will also loan you ourselves, or arrange with 361
the Gallatin National Bank to loan you, three hundred thousand dollars, with East Tennessee and Virginia R. R. bonds as security, for four months from date or to the expiration of our option at 12 per cent. up to the 2d May and 10 per cent. after that date, this to be in addition to the amount of the bonds to be purchased by us.

Please inform us whether you agree to this arrangement.

Yours very truly, 362

A. ISELIN & CO.

Endorsed—

"Proposition of Mess. A. Iselin & Co. Rel-
"ative to the purchase of the Last
"Bonds."

363

"Copy." NEW YORK, March 17, 1871.

MESS. A. ISELIN & CO. :

Gentlemen: We own your letter of even date, and in reply beg to say that we accept the proposition it contains.

We would remark that our understanding of that part of your letter which refers to your offer of a loan of $300,000, is that the road can return the whole am't or any part of it, at any time before 364
maturity, and receive credit at the same rate of interest and commission which the loan bears.

Yours truly,

(Signed.) R. T. WILSON & CO.,

Financial Agents of the East Tenn.,

Va. & Ga. R. R. Co.

365 COMPLAINANT'S EXHIBIT No. 6.

W. H. D. L., Spl. Exr.

NEW YORK, , 187 .

Memorandum from A. Iselin & Co.,
48 Wall street.

Oct. 18, 1870. $75.00. bot. out Interest R. T. Wilson & Co.

E. T. V. G. R. R.

366

COMPLAINANT'S EXHIBIT No. 7.

W. H. D. L., Spl. Exr.

JUNE 11th, 1878.

367 MR. JOHN T. TERRY,

Care of Messrs. E. D. MORGAN & Co.

Dear Sir: Respecting the proposed action of holders of Tennessee bonds against Tennessee railroads, about which you spoke to me, I have to say: That I have conferred with some of the parties largely interested in Tennessee railroads who confirm my views as stated to you, viz: That the rail-
368 roads as such would not contribute anything whatever towards a fund to induce a settlement of the State debt on account of apprehended danger to them through the action of Tennessee bondholders who may seek to hold them for Tennessee bond liabilities under the various acts of the Legislature of that State granting aid to railroads, &c. From the stand point of the roads view of that,

question they have nothing whatever to fear, and I 369
apprehend it will be quite impossible to convince any of them of their error, if it be one, which by the way, I scarcely believe to be possible—until they are convinced by the highest tribunal of the country.

But while this is unquestionably the position of the railroad men of Tennessee, yet I am happy to say truthfully that I do not know a single railroad man in or out of the State connected with Tennessee roads who is not now using and who has not for the 370
past three years used all their influence in the direction of the payment of the entire debt, if deemed to be practicable, or as an alternative of this to procure the best possible settlement that could be obtained for the bondholders. As a class they have intelligence enough to know the withering effects upon the general prosperity of the State of repudiation, and the State's prosperity and welfare is their prosperity and welfare, for you as a commercial man well know that of all business that you can 371
conceive of the railroad traffic business is more directly and quickly effected and shows the effects of prosperity or the reverse quicker and more directly than any other line of business.

I am well aware that the charge you made yesterday to the effect that the railroads have for previous to the past three years stood in the way of the settlement of the Tennessee debt, because it has been to their interest to get the price of bonds down so that they could buy them and pay off their debts to 372
the State, has been a current one; and while it has been as to nearly every railroad man in the State, with perhaps one or two unimportant exceptions, a slander upon them, yet it has had just enough of plausibility about it to mislead and give it currency. When I drew the original act of Feb. 25, 1869, for I was its author, although it was so

changed that it would scarcely be called the same, this act was prompted and supported not alone by the railroad men of the State, but largely by the best men all over the State, as being the only measure by which either the State or railroads could be saved. It was apparent to all men of even moderate sagacity that the railroads could not possibly meet the interest on their indebtedness, and pay the sinking fund, to say nothing of meeting the early maturing bonds. The penalty for a failure to do this was the appointment of a Receiver by the Governor. Experience in this State-receivership business, clearly demonstrated that instead of being a remedy, it became the greatest possible evil. State Receivers administered the roads so badly that in almost every single instance the State not only failed to collect any revenue, but was actually mulcted for a large sum to pay expenses of operating the road. In addition to this great evil, so long as the railroads were indebted to the State, the temptation for them to so influence legislation as to cause a default in the payment of coupons in order that they might buy them up at a discount and pay them over to the State, was so great that every sincere friend of the State felt great solicitude for its result. But while this was so manifest, and while it was so manifestly for the interest of the State to have the Act of Feb. 25, '69, passed and the R. road debt to the State paid off, that it would appear that every wayfaring man though a fool, should have seen it as he ran. Yet such was not the case, but on the contrary many good men and many very bad men opposed the passage of the bill, and the result was a bitter contest. The good men feared it was a measure to aid railroad men to speculate in Tennessee bonds, or at least some of them said so, while others said it would be wholly impracticable in operation, be-

cause of the inability of the railroads, on account 377
of their broken down and exhausted condition and
credit to avail of its provisions, while many of the
bad men feared it might do just what it has done,
viz: enable the roads to pay their debts and the
State theirs, get them beyond the reach of State re-
ceiverships, with all their opportunities for plunder
and place, and thus prevent them and their friends
from keeping the roads in a shape out of which they
hoped to reap rewards one way or another. To de-
feat the success of the measure they have used 378
every argument that could avail. When they saw
the roads making rapid progress in relieving their
debts they used the charge that they were conspir-
ing to put down the price of bonds, while at one
time there may have been less support from rail-
road men in the direction of tax levies and payment
of interest by the State than there should have
been, yet there has been, with perhaps one or two
exceptions, nothing of this kind for the last three
or four years, but on the contrary nearly all rail- 379
road men have been zealous supporters of the cred-
it of the State. I, for one, can say conscientiously
that I have at all times taken the broad view that
neither State nor railroads would amount to any-
thing unless a proper settlement with the creditors
of the State was effected in one way or another that
would be permanent, and to support this, or rather
to prepare the way to make such a settlement prob-
able and lasting, I not only had the measure or Act
of Feb. 25, 1869, under which railroads were au- 380
thorized to retire their indebtedness, introduced
and passed, but I also suggested and aided in pass-
ing the bill for the sale of the class of roads known
as insolvent roads, with a view of bringing about a
complete separation of Railroads and State, partly,
and, I may say, largely, in order to place the State
in a position where it would be to the interest

381 of all who might be in the position to have a voice in her legislative councils, to aid and support an honorable settlement with her creditors, which I have looked upon as being the first and necessary foundation stone upon which to build all prosperity, either railroad, State or individual. To show how faithfully I have preserved this line of policy, I may be excused for stating that nearly fifteen millions of dollars of the railroad debt has been retired by my house, and its associates, in which
382 I have taken the lead. Now, without boasting my friendship for the State, who can say as much, who in the last twenty-five years has contributed so largely as I have done towards making it possible for Tennessee creditors to even get anything like their just rights, and remember while I have done this I have never been directly or indirectly responsible for the creation of one dollar of indebtedness for any railroad for any other purpose which has not been paid in full with interest, and yet I am
383 usually classed as one of the railroad men in Tennessee of more or less influence in the affairs of the State. Now this much for the past relations of the railroad men, and to the State and back to the question of the rights of Tennessee bondholders against railroads, if they have any, which I most emphatically deny, but allow me to attract your attention to the fact that in the case of the Mobile and Ohio Railroad in the United States Circuit Court at Memphis, and this subject has been
384 before that tribunal fully argued by able counsel, and decided by Judge Trigg, without even expressing a doubt, to the effect that the lien of the State upon railroads for aid granted to them under the laws of Tennessee granting the aid, was taken solely for the State and was personal to it alone, and not in any manner or shape for the benefit of the holders of Tennessee bonds which had been issued

to railroads and by them sold to the public. This 385
is precisely what Judge Trigg decided, and it is what all railroad men have been advised by the best legal counsel they could obtain, and is in perfect harmony with the legislative construction and practice of the State; but as the adverse party to this decision have appealed to the United States Supreme Court at Washington, where the case is now pending, and where the decision of the Circuit Court at Memphis will be reviewed, I submit that long before any bondholder could now get his case 386
before that tribunal, it will have been tried just as fairly as it will ever be possible for him to have it tried, and I think even more so, because I don't believe that taken alone, there is enough in his claim, if made as the prime cause of the action to induce any court to entertain it, while in the Mobile and Ohio case he has the advantage of getting his cause before the highest tribunal of the land, not directly but collaterally in just as good a shape to test its merits as if it were the prime cause of the action. 387

Now, these being the facts in the case, while so stated at the outset no railroad man that I know will give one dollar on account of the supposed claim of bondholders, or rather to get the State to settle its debts in order to avoid that question, yet all will cheerfully co-operate with the State creditors in any and all practicable means by wich *it may be hoped* to reach a settlement, with the State upon terms satisfactory to its creditors, and a few of the railroad men are using their best endeavors to get an early 388
hearing of the Mobile and Ohio case at Washington, among which I am one; as the plaintiff in one branch of that case—which, as previously stated, will just as effectively settle the case as to the right of Tennessee bondholders against railroads, as it would be possible for the bondholders to do, by all the suits they could bring, and do it, too, from two to three

389 years sooner than they could get their case before that Couri and be heard.

Bearing on the Mobile and Ohio case, I beg to hand you herewith the brief of Messrs. Humes & Poston and Joseph B. Heiskel, and invite your attention to the argument beginning on page 12 of the same.

I will at all times take great pleasure in co-operating with the creditors of the State in their efforts to procure an honorable settlement. I feel that my
390 position is such as to make it possible for me to render them some assistance.

I remain, with much respect,

Yours truly,

R. T. WILSON.

391

COMPLAINANT'S EXHIBIT No. 8.

W. H. D. L., Spl. Exr.

Statement Mobile & Ohio Railroad with the State of Tennessee to 1st January, 1872.

To amount of principal		$1,684,800	
" Int. to 1st Jan'y, 1872		100,446	
			$1,785,246 00
" Cost of Tenn. Bonds, with interest and commission to 1st January, 1872		1,142,003.56	
392 " Disct. on 1,685,000 Co. Bonds at 17½ per cent		294,875	1,436,878 56
			$348,367 44

99

RESPONDENT'S EXHIBIT No. 1. 393

W. H. D.L.,—Spl. Exr.

FINANCIAL.

EAST TENNESSEE,
VIRGINIA AND GEORGIA RAILROAD

FIRST MORTGAGE 7 PER CENT. BONDS,
REDEEMABLE 1900.

Interest payable 1st of January and 1st of July in the City of New York.

The mortgage is for $3,500,000, on a road 270 miles long, which has 394
been in successful operation for many years. The lien is about $13,000 per mile, which makes it, with few exceptions, the smallest issued on any road in the United States. It was created for the sole purpose of paying off the debt due the State of Tennessee, amounting to $4,117,761.10.

An examination into this security will prove it to be one of the best ever offered in this market.

For terms and further particulars apply to

GALLATIN NATIONAL BANK,
No. 36 Wall Street,
Agent for the sale of the bonds.

395

This advertisement appeared in Commercial Advertiser, daily Tribune, World, Times, Journal of Commerce, Evening Post, and weekly Financial Chronicle, of New York City.

December 31, 1870.

FINANCIAL.

SEVEN PER CENT FIRST MORTGAGE BONDS 396

OF THE

NASHVILLE AND DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

This mortgage was created for the sole purpose of paying a debt due

397 to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow to abide settlement of a claim of the United States; $300,000 have been purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence.

DREXEL, WINTHROP & Co.,
18 Wall Street.

NEW YORK GUARANTY AND INDEMNITY Co.,
52 Broadway and Exchange Court.

398 This advertisement appeared in daily Evening Post, World, Commercial Advertiser, Bulletin, Times, Tribune, Observer, Christian Advocate, Independent, and Financial Chronicle, of New York City, and Union of Brooklyn.

RESPONDENT'S EXHIBIT NO 2.

W. H. D. L., Spl. Ex'r.

399 (Copy.) NASHVILLE, 2d Nov., 1861.

The Sinking Fund Commissioners have this day cancelled fourteen straight six per cent. coupon bonds of the State of Tennessee, each for one thousand dollars, belonging to the Sinking Fund of the East Tenn. & Geo. Railroad Company, and placed the amount, fourteen thousand dollars, to the credit of the said East Tenn. & Geo. R. R. Co.

The above fourteen bonds thus cancelled were put into the Sinking Fund of the East Tenn. & Geo.
400 R. R. Co. in place of twelve East Tenn. & Va. R. R. Co.'s endorsed bonds and two Nashville & Chattanooga R. R. Co. endorsed bonds previously purchased for ac. of East Tenn. & Ga. R. R. Co.'s Sinking Fund.

G. C. TORBETT,
J. T. DUNLAP, Comp't } Sinking Fund Commissioners.

No. 14. NASHVILLE, November 20, 1861. 401

Received from the East Tennessee & Georgia Railroad Co. Nine Tennessee State six per cent. Bonds, each for one thousand dollars, and numbered as follows: Nos. 4333, 4334, 5851, 9584, 9086, 7113, 10,415, 4332, 2068.

These Bonds are received on account of the payments due by said Company as Sinking Fund, when next called for, and are now cancelled under act of 1859-60, ch. 93.

ISHAM G. HARRIS, Governor. 402
9 Bonds. J. T. DUNLAP, Comptroller.
G. C. TORBETT, Pres. Bank of Tenn.
Com. of Sinking Fund.

CHATTANOOGA, June 4, 1862.

Received from the East Tenn. & Ga. Railroad Co. one hundred Tennessee six per cent. Bonds each for one thousand dollars.

These bonds are received on account of the payment due by said Company as Sinking Fund, and 403
are now cancelled under Act 1859-60, chap. 93.

100 Bonds.

ISHAM G. HARRIS, Governor.
G. C. TORBETT, Pres. Bank of Tenn.

CHATTANOOGA, June 4, 1862.

Received from the East Tenn. & Ga. R. R. Co. eleven endorsed bonds, each for one thousand dollars and numbered as follows: 42, 43, 59, 79, 49, 45, 50, 100, 51, 46 and 27. 404

Three Bonds are received on account of the payments due by said Company as Sinking Fund, and after cancellation returned to said Company under act of 1859-60, chap. 93, sec. 2.

11 Bonds.

ISHAM G. HARRIS, Governor.
G. C. TORBETT, Pres. Bank of Tenn.

405 I, G. W. Blackburn, Comptroller, certify the above is a true copy of the original on file in my office.

{ Compt. } { seal. } In witness whereof I have hereunto set my seal of office this 1st day of Feb. 1868.

G. W. BLACKBURN,
Comptroller.

406

407

408

RESPONDENT'S EXHIBIT No. 3.—W. H. D. L., *Spl. Exr.*

STATE LOAN.

1861.		DR.	1860.		CR.
June 29,	State Loan Dr. to Sinking Fund: For 2 State Bonds cancelled, see James Plunkett Letter, July 19, '61, filed with Sinking Fund Papers	$ 2,000	June 30,	By Balance	$1,162,000
Nov. 5,	State Loan Dr. to Sinking Fund: For 14 State Bonds, 1 M each, cancelled and receipted for	14,000			
1862.					
April 30,	State Loan to State Bonds: Commissioners of Sinking Fund receipt for 9 Bonds, Nos. 4,333, 4,334, 5,851, 9,584, 9,086, 7,113, 10,415, 4,332, 2,068, dated November 20, '61	9,000			
June 4,	Sundries to Bonds purchased: Endorsed Bonds, 11 Bonds of this Company, cancelled, Nos. 27, 42, 43, 59, 79, 49, 45, 50, 100, 51, 46				
	See Sinking Fund Commissioners' receipt, dated Chattanooga, June 4, 1862				
	State Loan for 100 State 6 per cents., $1,000 each, cancelled, see Sinking Fund Commissioners' receipt as above	100,000			
	To Balance	1,037,000			
		$1,162,000			$1,162,000
			June 30,	By Balance	$1,037,000

I certify that the above is a true transcript from the Ledger and Journal of the East Tennessee & Georgia Railroad Company.

O. H. P. ROGAN, *Auditor*,
E. Tenn., Va. & Ga. R. R. Co.

KNOXVILLE, TENN., September 10th, 1879.

412 411 410 409

103

686

413 RESPONDENT'S EXHIBIT NO. 4.
W. H. D. L., Sp'l. Ex'r.

(Copy.) COMPTROLLER'S OFFICE OF THE STATE OF TENNESSEE.
Agency in New York.

June 10, 1870.

Received from the East Tennessee, Virginia & Georgia Railroad Company, the following described
414 three hundred and fifty (350) bonds of the State of Tennessee, bearing interest at the rate of six per cent. per annum, in part payment of the debt which the State of Tennessee holds against said railroad company (description of bonds omitted), say three hundred and fifty (350) bonds of the State of Tennessee, as above described, for one thousand dollars each, making three hundred and fifty thousand dollars $350,000.

P. C. CALHOUN,

415 Pr't. agent of the Comptroller of the State of Tennessee specially authorized for that purpose.

Rev. Stamp, 4 cents. Cancelled.

(Copy.) COMPTROLLER'S OFFICE,
Nashville, Tenn., Jan'y 25, 1870.

By authority of an Act, passed Feb. 25, 1869, entitled "An Act to liquidate the State debt, contracted in aid of railroad companies in the State of
416 Tennessee," I hereby constitute and appoint the Fourth National Bank, of the City of New York, my agent to perform the duties of the comptroller of the Treasury of the State of Tennessee, as designated, and provided in and by Section 4 and 5 of the Act aforesaid.

G. W. BLACKBURN,
Compt.

[SEAL.]

I hereby certify that the above is a true 417
copy of the original document.

D. G. FANNING,
Notary Public.

(Copy.) COMPTROLLER'S OFFICE,
Nashville, Tenn., June 3, 1870.

P. C. CALHOUN, ESQ.,
New York,

Dear Sir:—I will be pleased to have you con- 418
tinue to act as my agent on the same terms and conditions as you have for my worthy predecessor. I will also wish to continue business with the Fourth National Bank. Will write you fully on to-morrow.

Yours very truly,
ED. R. PENNEBAKER,
[SEAL.] Complainant.

I certify that the above is a true copy of 419
the original letter.

D. G. FANNING,
Notary Public.

(Copy.) COMPTROLLER'S OFFICE OF THE
STATE OF TENNESSEE.
Agency in New York.

Received June 10, 11 and 14, 1870, from the East Tennessee, Virginia & Georgia Railroad Company, in July, 1869, January and July, 1870, coupons of 420
thirty dollars each of bonds of the State of Tennessee, delivered to me at these dates above mentioned, on account of and in part payment of the debt which the State of Tennessee holds against said railroad company, the sum of two hundred and eighty-two thousand seven hundred and fifty dollars ($282,750); say 3,834 coupons of July, 1870,

421 attached to bonds, and 5,591 coupons of July, 1869, and January, 1870, detached from bonds.

Rev. Stamp. P. C. C. June 14, '70. 5 cents.

P. C. CALHOUN, Prt. Agent,
Comptroller of State of Tenn.

(Copy.) COMPTROLLER'S OFFICE OF THE STATE OF TENNESSEE,
422 Agency in New York,
June 14, 1870.

Received from the East Tennessee, Virginia & Georgia Railroad Company eight hundred and forty-two (842) bonds of the State of Tennessee for one thousand dollars each, bearing interest at the rate of six per cent. per annum; say eight hundred and forty-two thousand dollars, as per annexed schedule (schedule omitted), in part payment of the
423 debt which the State of Tennessee holds against said railroad company.

P. C. C. Rev. Stamp. June 14, '70 5 cents.

P. C. CALHOUN, Prt. Agent,
Controller State of Tenn.

(Copy.) COMPTROLLER'S OFFICE OF THE STATE OF TENNESSEE,
424 Agency in New York.
June 11, 1870.

Received from the East Tennessee, Virginia & Georgia Railroad Company, forty-three (43) bonds of the State of Tennessee, for one thousand dollars each, bearing interest at the rate of six per cent. per annum, say forty-three thousand dollars, as per annexed schedule (schedule omitted) in part pay-

ment of the debt which the State of Tennessee holds 425
against said Railroad Company.

Rev. Stamp.
P. C. C.
June 11, 1870.
5 cents.

P. C. CALHOUN, Prt. Agent,
Comptroller of State of Tenn.

(Copy) COMPTROLLER'S OFFICE OF THE STATE OF TENNESSEE,
Agency in New York.
June 11, 1870.

Received from the East Tennessee, Virginia and 426
Georgia Railroad Company, Twenty-six hundred (2600) bonds of the State of Tennessee for one thousand dollars each, bearing interest at the rate of six per cent. per annum, say twenty-six hundred thousand dollars, as per annexed schedule (schedule omitted), in part payment of the debt which the State of Tennessee holds against said Railroad Company.

Rev. Stamp,
5 cents.
Cancelled.

P. C. CALHOUN, Pr't. Agent, 427
Comptroller of State of Tenn.

428

STIPULATION.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Mobile & Ohio Railroad Company,

vs.

THE MOBILE & OHIO RAILROAD COMPANY, WILLIAM B. DUNCAN and ANREDW F. ELLIOTT.

No. 319.

In the above-named suit, pending in equity, in the Circuit Court of the United States, for the Western District of Tennessee, at Memphis, the defendant assents to the taking of testimony by the complainants upon oral interrogatories, before William H. DeLancey, notary public, at his office, number 52 Broadway, in the city of New York, and State of New York, commencing on the 13th day of February, 1880, at 12 o'clock noon, and continuing from day to day thereafter until the witnesses produced at said place before said William H. DeLancey, have been fully examined.

And the defendant waive all notice as to the taking of said testimony, and agree that said William H. DeLancey may take the same as if he were an examiner of said Court. It being understood that the defendant shall have the privilege of being present in person, or by their counsel, at said examination and cross-examining the witnesses who may be examined.

Memphis, February 4th, 1880.

WRIGHT, FOLKES & WRIGHT,
Of Counsel for Defendants.

5

STIPULATION.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Mississippi & Tennessee Railroad Company.	No. 318.
6 *vs.*	
THE MISSISSIPPI & TENNESSEE RAILROAD COMPANY.	

In the above-named suit, pending in equity, in the Circuit Court of the United States, for the Western District of Tennessee, at Memphis, the defendant assents to the taking of testimony by the complain-
7 ants upon oral interrogatories, before William H. DeLancey, notary public, at his office, number 52 Broadway, in the city of New York, and State of New York, commencing on the 13th day of February, 1880, at 12 o'clock noon, and continuing from day to day thereafter until the witnesses produced at said place before said William H. DeLancey, have been fully examined.

And the defendant waives all notice as to the taking of said testimony, and agree that said William
8 H. DeLancey may take the same as if he were an examiner of said Court. It being understood that the defendant shall have the privilege of being present by their counsel, at said examination and cross-examining the witnesses who may be examined.

Memphis, February 4th, 1880.

WRIGHT, FOLKES & WRIGHT,
Of Counsel for Defendants.

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston Railroad Company

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

1

CONDITION OF STATE TREASURY OF TENNESSEE.

Cash on hand	January	1st,	1879,	. .	$461,532.61
" "	February	"	"	. .	413,645.12
" "	March	"	"	. .	457,073.93
" "	April	"	"	. .	468,379.60
" "	May	"	"	. .	358,600.57
" "	June	"	"	. .	348,169.96
" "	July	"	"	. .	322,825.38
" "	August	"	"	. .	245,755.01
" "	Sept'r	"	"	. .	258,209.89
" "	October	"	"	. .	240,160.10
" "	Novem'r	"	"	. .	228,444.32
" "	December	"	"	. .	211,308,78
" "	January	"	1880,	. .	201,613.06
" "	February	"	"	. .	175,453.60
" "	March	"	"	. .	184,421.60
" "	April	"	"	. .	190,515.94
" "	Close of business Ap'l 3,'80,				195,010.28

2

3

I certify that the above is a correct statement of the condition of the Treasury, at the time designated.

4

M. T. POLK,
Treasurer of Tenn.

CIRCUIT COURT OF THE UNITED STATES,

SIXTH JUDICIAL CIRCUIT—WESTERN DISTRICT OF TENNESSEE.

IN EQUITY.

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the MOBILE & OHIO RAILROAD COMPANY

vs.

THE MOBILE & OHIO RAILROAD COMPANY.

I, BELL W. ETHERIDGE, Clerk of the above named Court, hereby certify that the foregoing is a true copy of the record in the above entitled cause, and which are necessary to a hearing in the Supreme Court of the United States, and that the same are prepared according to the request of the solicitors for appellants in this cause.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Court, the 7th day of November, 1881, and the one hundredth and six of American Independence.

BELL W. ETHERIDGE,
Clerk.

W. B. WEISEGER,
D. Clerk.